

LEGISLATIVE INITIATIVES ON UNFUNDED FEDERAL
MANDATES

Y 4. G 74/7: M 31/20

HEARING

BEFORE THE

HUMAN RESOURCES AND INTERGOVERNMENTAL
RELATIONS SUBCOMMITTEE

OF THE

COMMITTEE ON
GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

H.R. 140

TO END THE PRACTICE OF IMPOSING UNFUNDED FEDERAL MANDATES
ON STATE AND LOCAL GOVERNMENTS AND TO ENSURE THAT THE
FEDERAL GOVERNMENT PAYS THE COSTS INCURRED BY THOSE GOV-
ERNMENTS IN COMPLYING WITH CERTAIN REQUIREMENTS UNDER
FEDERAL STATUTES AND REGULATIONS

H.R. 886

TO PROVIDE MANDATE RELIEF AND ASSISTANCE TO STATE AND LOCAL
GOVERNMENTS, AND FOR OTHER PURPOSES

AND

H.R. 1295

TO IMPROVE FEDERAL DECISIONMAKING BY REQUIRING A THOROUGH
EVALUATION OF THE ECONOMIC IMPACT OF FEDERAL LEGISLATIVE
AND REGULATORY REQUIREMENTS ON STATE AND LOCAL GOVERN-
MENTS AND THE ECONOMIC RESOURCES LOCATED THEREIN

MAY 18, 1994

Printed for the use of the Committee on Government Operations



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LEGISLATIVE INITIATIVES ON UNFUNDED FEDERAL MANDATES

WEDNESDAY, MAY 18, 1994

HOUSE OF REPRESENTATIVES,
HUMAN RESOURCES AND
INTERGOVERNMENTAL RELATIONS SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room 2247, Rayburn House Office Building, Hon. Edolphus Towns (chairman of the subcommittee) presiding.

Present: Representatives Edolphus Towns, Henry A. Waxman, Steven Schiff, John L. Mica, and Rob Portman.

Also present: Ronald A. Stroman, staff director; Martine M. DiCroce, clerk; and Martha B. Morgan, minority professional staff, Committee on Government Operations.

OPENING STATEMENT OF CHAIRMAN TOWNS

Mr. TOWNS. The Committee on Government Operations, Human Resources and Intergovernmental Relations Subcommittee will come to order.

This morning's hearing is our third on unfunded Federal mandates. Today, we will examine several mandate relief bills proposed by our colleagues in the House.

Specifically, we will consider H.R. 140, introduced by Representative Gary Condit of California. We will also look at H.R. 886, introduced by Mr. Clinger of Pennsylvania, and also look at H.R. 1295, introduced by Representative Moran of Virginia.

I commend my colleagues for their commitment to resolving this very important issue. The problems of Federal mandates are complex. Direct Federal aid to local governments dropped \$19.8 billion in 1990, from \$47 billion in 1980. During this same time 27 new laws or major amendments to existing statutes were enacted by Congress which imposed significant additional regulatory burdens on State or local governments.

These factors and others have created a crisis for many State and local governments. Some jurisdictions have had to reduce their work force and social service and infrastructure programs. We see overcrowded conditions in our State prisons. We see decreased capital expenditures for road repair and repair of school buildings.

These cuts have helped to erode the social fabric of our country, deepening poverty and unemployment. On the other hand, most of the laws which are the source of the concern about Federal mandates provide essential government services. The Safe Drinking

Water Act, the Asbestos Hazard Emergency Response Act, the Clean Air Act, the Americans With Disabilities Act, the Family and Medical Leave Act, the National Voter Registration Act, as well as the Medicaid program, are some examples of laws imposing mandates which are critical to protecting the health, safety and welfare of the American people.

In my judgment there are three keys to resolving the mandate issue. First, we must provide greater flexibility to State and local governments in implementing legislation. Second, we must have more open dialog with State and local governments about the costs and the benefits of proposed legislation. Finally, we must work out more equitable funding arrangements.

In this regard, there are some hopeful signs. On October 26, 1993, President Clinton issued an executive order in an attempt to address State and local concerns about unfunded mandates. The order requires Federal agencies to consult with State and local officials before imposing regulations. It also confirms the continuing need to evaluate costs and benefits, and the importance of risk assessment. Under the requirements of the Regulatory Flexibility Act, EPA is trying to develop ways for small community input early in its development of environmental regulations. At a subsequent hearing we will examine how well the executive order is being implemented.

We need a new partnership between Federal, State, and local governments to deliver our services. We look forward to hearing the recommendations from our colleagues this morning.

At this time, I would like to yield to Congressman Mica of Florida.

[The text of the bills H.R. 140, H.R. 886, and H.R. 1295 follow:]

103D CONGRESS
1ST SESSION

H. R. 140

To end the practice of imposing unfunded Federal mandates on State and local governments and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1993

Mr. CONDIT (for himself, Mr. MORAN, Mr. ROHRBACHER, Mr. POMBO, Mr. COX, Mr. PETE GEREN of Texas, Mr. PORTER, Mr. LEWIS of Florida, Mr. ORTON, Mr. STENHOLM, Mr. BREWSTER, Mr. PENNY, Mr. LAUGHLIN, and Mr. PACKARD introduced the following bill; which was referred to the Committee on Government Operations

SEPTEMBER 13, 1993

Additional sponsors: Mr. ENGLISH of Oklahoma, Mr. GORDON, Ms. KAPTUR, Mr. INGLIS of South Carolina, Mr. WYNN, Mr. ZELIFF, Mr. FAWELL, Ms. FURSE, Mr. PARKER, Mr. MCKEON, Mr. BAKER of California, Mr. MACHTLEY, Mr. CASTLE, Mr. SUNDQUIST, Mr. KLUG, Mr. PETRI, Mr. DELAY, Mr. TAYLOR of North Carolina, Mr. HUFFINGTON, Mr. WELDON, Mr. HUTCHINSON, Mr. LEHMAN, Mr. CALVERT, Mr. HILLIARD, Mr. DOOLITTLE, Mr. PETERSON of Minnesota, Mr. SWETT, Mr. CRAMER, Mr. SARPALIUS, Mr. TAYLOR of Mississippi, Mr. RAVENEL, Mr. FRANKS of New Jersey, Mr. CRAPO, Mr. KIM, Mr. HOKE, Mr. LANTOS, Mr. QUILLEN, Mr. KNOLLENBERG, Mr. EVERETT, Mr. CUNNINGHAM, Mr. BONILLA, Mr. BARLOW, Mr. HOEKSTRA, Mr. LEWIS of California, Mr. SENSENBRENNER, Mr. KINGSTON, Mr. BLUTE, Mr. BARTLETT of Maryland, Ms. PRYCE of Ohio, Mr. DARDEN, Mr. BISHOP, Mr. THOMAS of Wyoming, Mr. CAMP, Mr. MCCRERY, Mr. BILIRAKIS, Mr. VALENTINE, Mr. ROWLAND, Mr. MARTINEZ, Mr. BROWDER, Mr. SLATTERY, Mr. BARCA of Wisconsin, Mr. EMERSON, Mr. ROBERTS, Mr. ISTOOK, Mr. EWING, Mr. LIVINGSTON, Mr. JOHNSON of Georgia, Mrs. THURMAN, Mr. FIELDS of Texas, Mr. MINGE, Mr. MONTGOMERY, Mr. CLEMENT, Mr. COSTELLO, Ms. DANNER, Mr. WALSH, and Mr. KASICH

A BILL

To end the practice of imposing unfunded Federal mandates on State and local governments and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Mandate Re-
5 lief Act of 1993”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress finds and declares
8 that—

9 (1) unfunded Federal mandates on State and
10 local governments have become increasingly exten-
11 sive in recent years;

12 (2) such mandates have, in many instances,
13 added to growing deficits in State and local budgets
14 and have resulted in the need for State and local
15 governments to increase revenue or curtail services;
16 and

17 (3) such excessive fiscal burdens on State and
18 local governments have undermined, in many in-
19 stances, the ability of State and local governments

1 to achieve their responsibilities under State and local
2 law.

3 (b) PURPOSE.—The purpose of this Act is to assure
4 that the Federal Government pays the total amount of di-
5 rect costs incurred by State and local governments in com-
6 plying with certain requirements which take effect on or
7 after the date of the enactment of this Act under a Fed-
8 eral statute or regulation.

9 **SEC. 3. FEDERAL FUNDING REQUIREMENT.**

10 (a) IN GENERAL.—Notwithstanding any other provi-
11 sion of law, any requirement under a Federal statute or
12 regulation that a State or local government conduct an
13 activity (including a requirement that a government meet
14 national standards in providing a service) shall apply to
15 the government only if all funds necessary to pay the di-
16 rect costs incurred by the government in conducting the
17 activity are provided by the Federal Government.

18 (b) APPLICATION.—This section shall apply only to
19 requirements which take effect on or after the date of the
20 enactment of this Act.

○

103D CONGRESS
1ST SESSION

H. R. 886

To provide mandate relief and assistance to State and local governments,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 1993

Mr. CLINGER (for himself, Mr. SHAYS, Mr. SCHIFF, Mr. MCHUGH, Mr. HORN, Mr. ZIMMER, Mr. MCCANDLESS, Mr. RANGEL, Mr. HOBSON, Mr. GUNDERSON, Mr. ZELIFF, Mr. THOMAS of Wyoming, Mr. BARTLETT of Maryland, and Mr. MICA) introduced the following bill; which was referred jointly to the Committees on Government Operations and Rules

A BILL

To provide mandate relief and assistance to State and local
governments, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Mandate and Commu-
5 nity Assistance Reform Act”.

6 **SEC. 2. UNFUNDED FEDERAL MANDATE DEFINED.**

7 In this Act, the term “unfunded Federal mandate”
8 means a requirement established under a Federal statute
9 or regulation—

(1) that a State or local government, or both, undertake a specific activity or provide a service meeting minimum national standards; and

(2) for which the Federal Government does not provide sufficient funds to undertake such activity or provide such service.

TITLE I—TERMINATION OR SUSPENSION OF UNFUNDED FEDERAL MANDATES; CONSOLIDATION AND SIMPLIFICATION OF PLANNING AND REPORTING REQUIREMENTS

SEC. 101. TERMINATION OR SUSPENSION OF UNFUNDED FEDERAL MANDATES; CONSOLIDATION AND SIMPLIFICATION OF PLANNING OR REPORTING REQUIREMENTS.

(a) IN GENERAL.—

(1) GENERAL RULE.—An unfunded Federal mandate shall terminate or be suspended, or a planning or reporting requirement of a mandate shall be consolidated or simplified, respectively, if—

(A) the Commission on Unfunded Federal Mandates established under title II includes in its final report under section 202(d) a recommendation pursuant to paragraph (2)(A),

1 (B), or (C) of that section that the unfunded
2 Federal mandate should terminate or be sus-
3 pended, or that the planning or reporting re-
4 quirement be consolidated or simplified; and

5 (B) a joint resolution disapproving all rec-
6 ommendations included in the final report is
7 not enacted in accordance with section 102 be-
8 fore the end of the 60-day period beginning on
9 the date of the submittal of that final report.

10 (2) COMPUTATION OF PERIOD.—The days on
11 which either House of the Congress is not in session
12 because of an adjournment of more than 3 days to
13 a day certain shall be excluded in the computation
14 of the 60-day period under subsection (a).

15 (b) APPLICATION.—A termination or suspension, or
16 a consolidation or simplification of a planning or reporting
17 requirement, respectively, of an unfunded Federal man-
18 date under this title shall apply in accordance with the
19 final recommendation for that termination, suspension,
20 consolidation, or simplification in the final report of the
21 Commission.

22 **SEC. 102. CONGRESSIONAL CONSIDERATION OF COMMIS-**
23 **SION FINAL REPORT.**

24 (a) TERMS OF THE RESOLUTION.—For purposes of
25 section 101(a)(1)(B), the term “joint resolution” means

1 only a joint resolution which is introduced within 20 days
2 after submittal of a final report to the Congress under
3 section 202(d)—

4 (1) which does not have a preamble;

5 (2) the matter after the resolving clause of
6 which is as follows: “That the Congress disapproves
7 the recommendations in the final report of the Com-
8 mission on Unfunded Federal Mandates as submit-
9 ted to the Congress on
10 _____”, the blank spaces
11 being appropriately filled in;

12 (3) the title of which is as follows: “Joint reso-
13 lution disapproving the recommendations of the
14 Commission on Unfunded Federal Mandates.”; and

15 (4) which is introduced only by the Chairman
16 or ranking minority party Member of the Committee
17 on Government Operations in the House of Rep-
18 resentatives, or by the Chairman or ranking minor-
19 ity party member of the Committee on Govern-
20 mental Affairs in the Senate.

21 (b) CONSIDERATION.—(1) On or after the third day
22 after the date on which the committee to which such a
23 resolution is referred has reported such a resolution, it is
24 in order (even though a previous motion to the same effect
25 has been disagreed to) to move to proceed to the consider-

1 ation of the resolution (but only on the day after the cal-
2 endar day on which a Member announces to the House
3 concerned the Member's intention to do so). All points of
4 order against the resolution (and against consideration of
5 the resolution) are waived. The motion is highly privileged
6 in the House of Representatives and is privileged in the
7 Senate and is not debatable. The motion is not subject
8 to amendment, or to a motion to postpone, or to a motion
9 to proceed to the consideration of other business. A motion
10 to reconsider the vote by which the motion is agreed to
11 or disagreed to shall not be in order. If a motion to pro-
12 ceed to the consideration of the resolution is agreed to,
13 the respective House shall immediately proceed to consid-
14 eration of the joint resolution without intervening motion,
15 order, or other business, and the resolution shall remain
16 the unfinished business of the respective House until
17 disposed of.

18 (2) Debate on the resolution, and on all debatable
19 motions and appeals in connection therewith, shall be lim-
20 ited to not more than 5 hours in the House of Representa-
21 tives, and not more than 10 hours in the Senate, which
22 shall be divided equally between those favoring and those
23 opposing the resolution. An amendment to the resolution
24 is not in order. A motion further to limit debate is in order
25 and not debatable. A motion to postpone, or a motion to

1 proceed to the consideration of other business, or a motion
2 to recommit the resolution is not in order. A motion to
3 reconsider the vote by which the resolution is agreed to
4 or disagreed to is not in order.

5 (3) Immediately following the conclusion of the de-
6 bate on a resolution described in subsection (a) and a sin-
7 gle quorum call at the conclusion of the debate if re-
8 quested in accordance with the rules of the appropriate
9 House, the vote on final passage of the resolution shall
10 occur.

11 (4) Appeals from the decisions of the Chair relating
12 to the application of the rules of the Senate or the House
13 of Representatives, as the case may be, to the procedure
14 relating to a resolution described in subsection (a) shall
15 be decided without debate.

16 (c) CONSIDERATION BY OTHER HOUSE.—(1) If, be-
17 fore the passage by one House of a resolution of that
18 House described in subsection (a), that House receives
19 from the other House a resolution described in subsection
20 (a), then the following procedures shall apply:

21 (A) The resolution of the other House shall not
22 be referred to a committee and may not be consid-
23 ered in the House receiving it except in the case of
24 final passage as provided in subparagraph (B)(ii).

1 (B) With respect to a resolution described in
2 subsection (a) of the House receiving the
3 resolution—

4 (i) the procedure in that House shall be
5 the same as if no resolution had been received
6 from the other House; but

7 (ii) the vote on final passage shall be on
8 the resolution of the other House.

9 (2) Upon disposition of the resolution received from
10 the other House, it shall no longer be in order to consider
11 the resolution that originated in the receiving House.

12 (d) RULES OF THE SENATE AND HOUSE.—This sec-
13 tion is enacted by Congress—

14 (1) as an exercise of the rulemaking power of
15 the Senate and House of Representatives, respec-
16 tively, and as such it is deemed a part of the rules
17 of each House, respectively, but applicable only with
18 respect to the procedure to be followed in that
19 House in the case of a resolution described in sub-
20 section (a), and it supersedes other rules only to the
21 extent that it is inconsistent with such rules; and

22 (2) with full recognition of the constitutional
23 right of either House to change the rules (so far as
24 relating to the procedure of that House) at any time,

1 in the same manner, and to the same extent as in
2 the case of any other rule of that House.

3 **TITLE II—COMMISSION ON UN-**
4 **FUNDED FEDERAL MAN-**
5 **DATES**

6 **SEC. 201. ESTABLISHMENT.**

7 There is established a commission which shall be
8 known as the “Commission on Unfunded Federal Man-
9 dates” (in this title referred to as the “Commission”).

10 **SEC. 202. DUTIES OF COMMISSION.**

11 (a) **STUDY AND RECOMMENDATIONS.**—The Commis-
12 sion shall—

13 (1) investigate and review the role of unfunded
14 Federal mandates in relations among local, State,
15 and Federal governments;

16 (2) study and make recommendations to the
17 Congress regarding—

18 (A) the termination of those mandates that
19 are duplicative, or obsolete, or that lack prac-
20 tical utility;

21 (B) the temporary suspension of those
22 mandates that compound the fiscal difficulties
23 of State and local governments during periods
24 immediately following 2 consecutive quarters of
25 decline in real Gross National Product, and for

1 which suspension may be lifted immediately fol-
2 lowing 2 consecutive quarters of growth in real
3 Gross National Product;

4 (C) the consolidation or simplification of
5 planning or reporting requirements for man-
6 dates in order to reduce duplication and facili-
7 tate compliance by State and local governments;

8 (D) the establishment of common Federal
9 definitions or standards to be used by State and
10 local governments in complying with unfunded
11 mandates that use different definitions or
12 standards for the same terms or principles;

13 (E) a process by which State and local
14 governments can participate in meeting national
15 domestic objectives without the burden created
16 by unfunded Federal mandates, including the
17 development of suggestions for funding the
18 Federal mandates imposed after the date of the
19 enactment of this Act on State and local
20 governments;

21 (3) include in its final report recommendations
22 that the Federal Government relieve financial bur-
23 dens on State and local governments by decreasing
24 the operating, administrative, and financial respon-
25 sibilities of State and local governments for one or

1 more federally mandated programs which require
2 that Federal funding be augmented by non-Federal
3 funds; and

4 (4) include in its final report recommendations
5 that State or local governments assume increased
6 operating, or administrative responsibilities for one
7 or more programs which, as of the date of enact-
8 ment of this Act, are fully or partially funded, oper-
9 ated, or administered by the Federal Government
10 but which the Commission determines would be op-
11 erated or administered more effectively and effi-
12 ciently by States and localities.

13 In making recommendations under paragraphs (3) and
14 (4), the Commission shall ensure that implementation of
15 those recommendations will result in a net decrease in
16 obligations and outlays by each unit of State and local
17 government.

18 (b) CRITERIA.—

19 (1) IN GENERAL.—The Commission shall estab-
20 lish criteria for making recommendations under sub-
21 section (a)(2) (A), (B), and (C).

22 (2) SUBMISSION OF PROPOSED CRITERIA.—Not
23 later than 60 days after the Commission is con-
24 vened, the Commission shall submit to the Commit-
25 tee on Government Operations of the House of Rep-

1 representatives and the Committee on Governmental
2 Affairs of the Senate proposed criteria under this
3 subsection, and thereafter provide a period of 30
4 days for those committees to comment on and rec-
5 ommend changes in the criteria.

6 (3) FINAL CRITERIA.—Not later than 45 days
7 after the date of the submittal of proposed criteria,
8 the Commission shall—

9 (A) consider comments and recommenda-
10 tions received under paragraph (2);

11 (B) adopt and incorporate any of those
12 recommendations the Commission determines
13 will aid the Commission in carrying out its du-
14 ties; and

15 (C) issue final criteria under this sub-
16 section.

17 (c) PRELIMINARY REPORT.—

18 (1) IN GENERAL.—Not later than 630 days
19 after the completion of appointment of the members
20 of the Commission, the Commission shall—

21 (A) prepare and publish a preliminary re-
22 port on its activities under this title, including
23 preliminary recommendations pursuant to sub-
24 section (a)(2);

(B) publish in the Federal Register a notice of availability of the preliminary report; and

(C) provide copies of the preliminary report to the public upon request.

(2) PUBLIC HEARINGS.—The Commission shall hold public hearings on the preliminary recommendations contained in the preliminary report of the Commission under this subsection.

(d) FINAL REPORT.—Not later than 120 days after the date of the publication of the preliminary report under subsection (c), the Commission shall submit to the Congress and the President a final report on the findings, conclusions, and recommendations of the Commission, including final recommendations pursuant to subsection (a)(2) (A), (B), and (C) and subsection (a)(3) and (4).

SEC. 203. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—

(1) IN GENERAL.—The Commission shall be composed of 8 members appointed by the President, by and with the advise and consent of the Senate, from individuals who possess extensive leadership experience in and knowledge of State and local government and intergovernmental relations.

1 (2) LIMITATION.—An individual who is a Mem-
2 ber or employee of the Congress may not be ap-
3 pointed or serve as a member of the Commission.

4 (b) WAIVER OF LIMITATION ON EXECUTIVE SCHED-
5 ULE POSITIONS.—Appointments may be made under this
6 section without regard to section 5311(b) of title 5, United
7 States Code.

8 (c) POLITICAL AFFILIATION.—Not more than 4
9 members of the Commission may be of the same political
10 party.

11 (d) TERMS.—

12 (1) IN GENERAL.—Each member of the Com-
13 mission shall be appointed for the life of the Com-
14 mission.

15 (2) VACANCIES.—A vacancy in the Commission
16 shall be filled in the manner in which the original
17 appointment was made.

18 (e) BASIC PAY.—

19 (1) RATES OF PAY.—Members of the Commis-
20 sion shall serve without pay.

21 (2) PROHIBITION OF COMPENSATION OF FED-
22 ERAL EMPLOYEES.—Members of the Commission
23 who are full-time officers or employees of the United
24 States may not receive additional pay, allowances, or

1 benefits by reason of their service on the Commis-
2 sion.

3 (f) TRAVEL EXPENSES.—Each member of the Com-
4 mission shall receive travel expenses, including per diem
5 in lieu of subsistence, in accordance with sections 5702
6 and 5703 of title 5, United States Code.

7 (g) CHAIRPERSON.—The President shall designate a
8 member of the Commission as Chairperson at the time of
9 the appointment of that member.

10 (h) MEETINGS.—

11 (1) IN GENERAL.—Subject to paragraph (2),
12 the Commission shall meet at the call of the Chair-
13 person or a majority of its members.

14 (2) FIRST MEETING.—The Commission shall
15 convene its first meeting by not later than 45 days
16 after the date of the completion of appointment of
17 the member of the Commission.

18 (3) QUORUM.—A majority of members of the
19 Commission shall constitute a quorum but a lesser
20 number may hold hearings.

21 **SEC. 204. DIRECTOR AND STAFF OF COMMISSION; EXPERTS**
22 **AND CONSULTANTS.**

23 (a) DIRECTOR.—The Commission shall, without re-
24 gard to section 5311(b) of title 5, United States Code,
25 have a Director who shall be appointed by the Commis-

1 sion. The Director shall be paid at the rate of basic pay
2 payable for level IV of the Executive Schedule.

3 (b) STAFF.—With the approval of the Commission,
4 and without regard to section 5311(b) of title 5, United
5 States Code, the Director may appoint and fix the pay
6 of such staff as is sufficient to enable the Commission to
7 carry out its duties.

8 (c) APPLICABILITY OF CERTAIN CIVIL SERVICE
9 LAWS.—The Director and staff of the Commission may
10 be appointed without regard to the provisions of title 5,
11 United States Code, governing appointments in the com-
12 petitive service, and may be paid without regard to the
13 provisions of chapter 51 and subchapter III of chapter 53
14 of that title relating to classification and General Schedule
15 pay rates, except that an individual so appointed may not
16 receive pay in excess of the annual rate of basic pay
17 payable for GS-18 of the General Schedule.

18 (d) EXPERTS AND CONSULTANTS.—The Commission
19 may procure temporary and intermittent services of ex-
20 perts or consultants under section 3109(b) of title 5,
21 United States Code.

22 (e) STAFF OF FEDERAL AGENCIES.—Upon request
23 of the Director, the head of any Federal department or
24 agency may detail, on a reimbursable basis, any of the

1 personnel of that department or agency to the Commission
2 to assist it in carrying out its duties under this title.

3 **SEC. 205. POWERS OF COMMISSION.**

4 (a) **HEARINGS AND SESSIONS.**—The Commission
5 may, for the purpose of carrying out this title, hold hear-
6 ings, sit and act at times and places, take testimony, and
7 receive evidence as the Commission considers appropriate.

8 (b) **POWERS OF MEMBERS AND AGENTS.**—Any mem-
9 ber or agent of the Commission may, if authorized by the
10 Commission, take any action which the Commission is
11 authorized to take by this section.

12 (c) **OBTAINING OFFICIAL DATA.**—The Commission
13 may secure directly from any department or agency of the
14 United States information necessary to enable it to carry
15 out this title. Upon request of the Chairperson of the Com-
16 mission, the head of that department or agency shall fur-
17 nish that information to the Commission.

18 (d) **MAILS.**—The Commission may use the United
19 States mails in the same manner and under the same con-
20 ditions as other departments and agencies of the United
21 States.

22 (e) **ADMINISTRATIVE SUPPORT SERVICES.**—Upon the
23 request of the Commission, the Administrator of General
24 Services shall provide to the Commission, on a reimburs-

1 able basis, the administrative support services necessary
 2 for the Commission to carry out its duties under this title.

3 (f) **CONTRACT AUTHORITY.**—The Commission may,
 4 subject to appropriations, contract with and compensate
 5 government and private agencies or persons for property
 6 and services used to carry out its duties under this title.

7 **SEC. 206. TERMINATION.**

8 The Commission shall terminate 90 days after sub-
 9 mitting its final report pursuant to section 202(d).

10 **SEC. 207. AUTHORIZATION OF APPROPRIATIONS.**

11 There are authorized to be appropriated to the Com-
 12 mission \$12,000,000 to carry out this title.

13 **TITLE III—INTEGRATED**
 14 **FEDERAL ASSISTANCE**

15 **SEC. 301. SHORT TITLE.**

16 This title may be cited as the “Community Assistance
 17 Improvement Act of 1992”.

18 **SEC. 302. PURPOSE.**

19 The purposes of this title are the following:

20 (1) To encourage the integration of Federal
 21 grant programs by local governments, when such in-
 22 tegration would further the goals and objectives of
 23 the grant programs integrated.

24 (2) To enable more efficient use of Federal,
 25 State, and local resources.

(3) To enable local governments to adapt programs of Federal assistance to the particular needs of low-income citizens and the operating practices of recipients, by drawing upon appropriations available from more than one Federal program.

(4) To enable recipients of Federal assistance to more effectively target resources toward areas of significant need for low-income citizens, by integrating programs and program funds across existing Federal assistance categories.

**SEC. 303. PROVISION OF FEDERAL ASSISTANCE IN ACCORD-
ANCE WITH APPROVED INTEGRATED ASSIST-
ANCE PLAN.**

(a) PAYMENTS TO LOCAL GOVERNMENTS.—Notwithstanding any other provision of law, amounts available to a local government under a covered Federal assistance program included in an approved integrated assistance plan shall be provided to and used by the local government in accordance with that approved integrated assistance plan.

(b) ELIGIBILITY FOR BENEFITS.—An individual or family that is eligible for benefits or services under a Federal program that is a covered Federal assistance program included in an approved integrated assistance plan may receive those benefits only in accordance with the plan.

1 **SEC. 304. APPLICATION FOR APPROVAL OF INTEGRATED**
2 **ASSISTANCE PLAN.**

3 (a) **IN GENERAL.**—An eligible local government may
4 submit to the Interagency Review Council in accordance
5 with this section an application for approval of an inte-
6 grated assistance plan.

7 (b) **CONTENTS OF APPLICATION.**—An application
8 submitted under this section shall include—

9 (1) a proposed integrated assistance plan that
10 complies with subsection (c);

11 (2) certification by each official who has respon-
12 sibility under State or local law for administering as-
13 sistance that is provided to the local government (di-
14 rectly or through intervening grantees or other re-
15 cipients) under a covered Federal assistance pro-
16 gram under the plan, that the official approves and
17 will assist in implementing the plan;

18 (3) certification by the chief executive of the
19 local government, and such additional assurances as
20 may be required by the Interagency Review Council
21 (which shall include certification from the Attorney
22 General of the State of the applicant), that—

23 (A) the local government has the ability
24 and authority to implement the proposed plan,
25 either directly or through contractual or other

1 arrangements, throughout the geographic area
2 in which the proposed plan is intended to apply;

3 (B) amounts are available from non-Fed-
4 eral sources to pay the non-Federal share of
5 any covered Federal assistance programs under
6 the proposed plan; and

7 (C) low income individuals and families
8 that reside in that geographic area participated
9 in the development of the proposed plan;

10 (4) comments on the proposed plan prepared
11 under subsection (d) by the Governor of the State
12 of the local government; and

13 (5) any other information the Interagency Re-
14 view Council may require to approve the proposed
15 plan.

16 (c) CONTENTS OF PLAN.—An integrated assistance
17 plan submitted by a local government under this section
18 shall include the following:

19 (1) GEOGRAPHIC AREA.—The geographic area
20 to which the plan applies and the rationale for so de-
21 fining the area.

22 (2) RECIPIENTS.—The particular groups of in-
23 dividuals, by age, service needs, economic cir-
24 cumstances, or other defining factors, who will re-
25 ceive services and benefits under the plan.

1 (3) GOALS AND PERFORMANCE CRITERIA.—
2 Specific goals and measurable performance criteria,
3 how the plan is expected to attain those goals and
4 criteria, how performance will be measured, and a
5 system for the comprehensive evaluation of the im-
6 pact of the plan on participants, the community, and
7 program costs.

8 (4) PUBLIC PARTICIPATION.—Elements that
9 will assist individuals and families who will receive
10 benefits under the plan to participate actively in de-
11 veloping both long- and short-range plans for bene-
12 fits provided under the plan and in deciding other
13 matters, including—

14 (A) the scope of services necessary and de-
15 sired to meet the full range of the individual's
16 or family's needs,

17 (B) the choice of provider, and

18 (C) any other choices affecting the service
19 design for that individual or family.

20 (5) COVERED FEDERAL ASSISTANCE PRO-
21 GRAMS.—The eligible Federal assistance programs
22 to be included as covered Federal assistance pro-
23 grams under the plan and the specific benefits that
24 will be provided under the plan pursuant to those
25 programs, including criteria for determining eligi-

1 bility for benefits under the system, the services
2 available, the amounts and form (such as cash, in-
3 kind contributions, or financial instruments) of non-
4 service benefits, and any other descriptive informa-
5 tion the Interagency Review Council considers nec-
6 essary to approve the plan.

7 (6) FEDERAL REQUIREMENTS TO BE
8 WAIVED.—Any Federal statutory or regulatory re-
9 quirement applicable under a covered Federal assist-
10 ance program under the plan, the waiver of which is
11 necessary in order to implement the plan.

12 (7) FISCAL CONTROL AND ACCOUNTABILITY.—
13 Fiscal control and related accountability procedures
14 applicable under the plan.

15 (8) SOURCES OF NON-FEDERAL FUNDS.—A de-
16 scription of the sources of all non-Federal funds that
17 are required to carry out covered Federal assistance
18 programs under the plan.

19 (9) OTHER INFORMATION.—Any other informa-
20 tion the Interagency Review Council may require to
21 approve the plan.

22 (d) PROCEDURE FOR APPLYING.—

23 (1) SUBMISSION TO GOVERNOR.—To apply for
24 approval of an integrated assistance plan, a local
25 government shall submit a completed application

1 under this section to the Governor of the State in
2 which the local government is located.

3 (2) SUBMISSION BY GOVERNOR.—A Governor
4 who receives an application from a local government
5 under paragraph (1) shall, by not later than 30 days
6 after the date of that receipt—

7 (A) prepare comments on the proposed in-
8 tegrated assistance plan included in the applica-
9 tion; and

10 (B) submit the application and comments
11 to the Interagency Review Council.

12 **SEC. 305. REVIEW AND APPROVAL OF INTEGRATED ASSIST-**
13 **ANCE PLANS.**

14 (a) REVIEW OF APPLICATIONS.—Upon receipt of an
15 application for approval of an integrated assistance plan
16 under this title, the Interagency Review Council shall—

17 (1) review the application and plan in a timely
18 fashion;

19 (2) approve or disapprove the plan within 45
20 days after receipt of the application;

21 (3) notify the applicant local government in
22 writing of that approval or disapproval by not later
23 than 15 days after the date of that approval or dis-
24 approval; and

1 (4) in the case of any disapproval of a plan, in-
2 clude a written justification of the reasons for dis-
3 approval in the notice of disapproval sent to appli-
4 cant governments.

5 (b) APPROVAL.—

6 (1) REQUIREMENTS.—The Interagency Review
7 Council may approve an integrated assistance plan
8 for which an application is submitted under this
9 title, or any part of such a plan, if a majority of
10 members of the Council determines that—

11 (A) the plan (or part) will improve the ef-
12 fectiveness and efficiency of providing benefits
13 under covered Federal programs under the plan
14 by reducing administrative rigidity, duplication,
15 and unnecessary expenditures;

16 (B) the applicant local government has
17 adequately considered, and the plan appro-
18 priately addresses, any effect that administra-
19 tion of each covered Federal program under the
20 plan (or part) will have on administration of the
21 other covered Federal programs under that
22 plan;

23 (C) the applicant local government has or
24 is developing data bases, planning, and evalua-

1 tion processes that are adequate for implement-
2 ing the plan;

3 (D) implementation of the plan will ade-
4 quately achieve the purposes of this title and of
5 each covered Federal assistance program under
6 the plan;

7 (E) the plan and the application for ap-
8 proval of the plan comply with the requirements
9 of this title;

10 (F) the plan is adequate to ensure that in-
11 dividuals and families that receive benefits
12 under covered Federal assistance programs
13 under the plan will continue to receive benefits
14 under the plan that meet the needs intended to
15 be met under the program; and

16 (G) the level of those benefits will not be
17 reduced for any individual or family.

18 (2) LIMITATION.—The Interagency Review
19 Council may not approve an integrated assistance
20 plan under this title if implementation of the plan
21 would result in any increase in the total amount of
22 obligations or outlays of discretionary appropriations
23 or direct spending under covered Federal assistance
24 programs under the plan, over the amounts of such

obligations and outlays that would occur under those programs without implementation of the plan.

(3) APPROVAL IN WHOLE OR IN PART.—

(A) IN GENERAL.—The Interagency Review Council may approve an integrated assistance plan under this section, or any part of the plan.

(B) DISAPPROVAL OF PART OF PLAN REQUIRED.—The Interagency Review Council shall disapprove a part of an integrated assistance plan if a majority of the Council disapproves that part of the plan based on a failure of the part to comply with paragraph (1).

(4) PERIOD OF PLAN.—In approving an integrated assistance plan under this section, the Interagency Review Council shall specify the period during which the plan is effective. No plan shall be effective after the date of the termination of effectiveness of this title under section 311(a).

(5) ELIGIBILITY UNDER FEDERAL PROGRAMS NOT AFFECTED.—Disapproval by the Interagency Review Council of an integrated assistance plan submitted by a local government under this title shall not affect the eligibility of the local government or

1 of any individual for benefits under any Federal
2 program.

3 (c) MEMORANDA OF UNDERSTANDING.—

4 (1) IN GENERAL.—The Interagency Review
5 Council may not approve an integrated Federal as-
6 sistance plan unless the local government which ap-
7 plies for that approval enters into a memorandum of
8 understanding under this subsection with the Inter-
9 agency Review Council.

10 (2) TERMS.—A memorandum of understanding
11 under this subsection shall specify all understand-
12 ings that have been reached by the Interagency Re-
13 view Council and the local government regarding the
14 approval and implementation of the integrated as-
15 sistance plan that is the subject of the memoran-
16 dum, including with respect to—

17 (A) all requirements under covered Federal
18 assistance programs that are to be waived by
19 the Interagency Review Council pursuant to
20 section 306(b);

21 (B) the total amount of Federal funds that
22 will be provided as benefits under or used to ad-
23 minister the plan, or a mechanism for determin-
24 ing that amount, including specification of the
25 total amount of Federal funds that will be pro-

1 vided or used under each covered Federal
2 assistance program;

3 (C) the sources of all non-Federal funds
4 that will be provided as benefits under or used
5 to administer the plan;

6 (D) measurable performance criteria that
7 will be used during the term of the plan to de-
8 termine the extent to which the goals and per-
9 formance levels of the plan are achieved; and

10 (E) the data to be collected to make that
11 determination.

12 (d) LIMITATION.—The Interagency Review Council
13 may not, as a condition of approval of an integrated assist-
14 ance plan or with respect to the implementation of an ap-
15 proved integrated assistance plan, establish any confiden-
16 tiality requirement which would impede the exchange of
17 information needed for the design or provision of benefits
18 under the plan or conflict with existing law.

19 **SEC. 306. IMPLEMENTATION OF APPROVED INTEGRATED**
20 **ASSISTANCE PLANS.**

21 (a) PAYMENTS AND ADMINISTRATION IN ACCORD-
22 ANCE WITH PLAN.—Notwithstanding any other law, any
23 benefit which, under an eligible Federal assistance pro-
24 gram, is required to be provided to or administered by a
25 State or local government official shall be paid or adminis-

1 tered in the manner specified in an approved integrated
2 assistance plan if the certification of that official is in-
3 cluded in the application for approval of the plan pursuant
4 to section 304(b)(2).

5 (b) WAIVER OF REQUIREMENTS.—

6 (1) IN GENERAL.—Notwithstanding any other
7 provision of law, the Interagency Review Council
8 may waive any requirement applicable under Federal
9 law to the administration of, or provision of benefits
10 under, any eligible Federal assistance program that
11 is a covered Federal assistance program under an
12 approved integrated assistance plan, if that waiver
13 is—

14 (A) reasonably necessary for the implemen-
15 tation of the plan; and

16 (B) approved by a majority of members of
17 the Interagency Review Council.

18 (2) FINDING REQUIRED.—The Interagency Re-
19 view Council may not waive a requirement under
20 this subsection unless the Council finds that waiver
21 of the requirement will not result in a reduction in
22 services or benefits for any individual or family that
23 is eligible for benefits under a covered Federal
24 assistance program.

1 (3) LIMITATIONS.—The Interagency Review
2 Council may not waive under this subsection any
3 requirement—

4 (A) established by statute or regulation
5 under—

6 (i) title VI of the Civil Rights Act of
7 1964 (42 U.S.C. 2000d et seq.);

8 (ii) section 504 of the Rehabilitation
9 Act of 1973 (29 U.S.C. 701 et seq.);

10 (iii) title IX of the Education Amend-
11 ments of 1972 (86 Stat. 373 et seq.);

12 (iv) the Age Discrimination Act of
13 1975 (42 U.S.C. 6101 et seq.); or

14 (B) for payment of a non-Federal share of
15 funding of an activity under a covered Federal
16 assistance program.

17 (c) EVALUATION AND TERMINATION.—

18 (1) IN GENERAL.—A local government, in ac-
19 cordance with regulations to be issued by the Inter-
20 agency Review Council, shall—

21 (A) submit such reports on and cooperate
22 in such audits of the implementation of its ap-
23 proved integrated assistance program as the
24 Interagency Review Council may require; and

(B) pursuant to regulations to be issued by the Interagency Review Council periodically evaluate the effect that implementation of the plan has had on—

(i) individuals who receive benefits under the plan;

(ii) communities where those individuals live; and

(iii) costs of administering covered Federal assistance programs under the plan.

(2) ANNUAL REPORTS.—Not later than 90 days after the end of the 1-year period beginning on the date of the approval by the Interagency Review Council of an approved integrated assistance plan of a local government, and annually thereafter, the local government shall submit to the Interagency Review Council a report on the principal activities and achievements under the plan during the period covered by the report, and comparing those achievements to the goals and measurable performance criteria included in the plan pursuant to section 304(e)(3).

(3) TERMINATION OF PLAN.—

1 (A) IN GENERAL.—If the Interagency Re-
2 view Council, after consultation with the head
3 of each Federal agency responsible for admin-
4 istering a covered Federal assistance program
5 under an approved integrated assistance plan of
6 a local government, determines that—

7 (i) the local government has substan-
8 tially failed to achieve the goals and per-
9 formance criteria included in the plan pur-
10 suant to section 304(c)(3); and

11 (ii) in consideration of any experiences
12 gained in implementation of the plan,
13 those goals and criteria are sound;
14 the Interagency Review Council may terminate
15 the effectiveness of the plan.

16 (B) TIMING.—In terminating the effective-
17 ness of an approved integrated assistance plan
18 under this paragraph, the Interagency Review
19 Council shall allow a reasonable period of time
20 for appropriate Federal, State, and local agen-
21 cies to resume administration of Federal pro-
22 grams that were covered Federal assistance
23 programs under the plan.

24 (d) FINAL REPORT; EXTENSION OF PLANS.—

1 (1) FINAL REPORT OF LOCAL GOVERNMENT.—
2 Not later than 45 days after the end of the effective
3 period of an approved integrated assistance plan of
4 a local government, or at any time that the local
5 government determines that the plan has dem-
6 onstrated its worth and proven to be a superior way
7 to provide benefits under covered Federal assistance
8 programs under the plan, the local government shall
9 submit a final report on its implementation of the
10 plan (including a full evaluation of the successes and
11 shortcomings of the plan and the effects of that im-
12 plementation on individuals who receive benefits
13 under those programs) to the Interagency Review
14 Council.

15 (2) EXTENSION OF PLAN.—The Interagency
16 Review Council may extend the effective period of an
17 approved integrated assistance plan for such period
18 as may be appropriate, based on the report of a local
19 government under paragraph (1).

20 **SEC. 307. COMMUNITY ADVISORY COMMITTEES.**

21 (a) ESTABLISHMENT.—A local government which ap-
22 plies for approval of an integrated assistance plan under
23 this title shall establish a Community Advisory Committee
24 in accordance with this section.

1 (b) FUNCTIONS.—A Community Advisory Committee
2 shall advise a local government in the development and
3 implementation of its integrated assistance plan, including
4 with respect to—

5 (1) conducting public hearings;

6 (2) representing the interest of low income indi-
7 viduals and families; and

8 (3) reviewing and commenting on all commu-
9 nity policies, programs, and actions under the plan
10 which affect low income individuals and families,
11 with the purpose of assuring maximum coordination
12 and responsiveness of the plan in providing benefits
13 under the plan to those individuals and families.

14 (c) MEMBERSHIP.—The membership of a Community
15 Advisory Committee shall—

16 (1) consist of—

17 (A) low income individuals, who shall—

18 (i) comprise at least one-third of the
19 membership, and

20 (ii) include minority individuals who
21 are participants or who qualify to partici-
22 pate in eligible Federal assistance pro-
23 grams;

24 (B) representatives of low income individ-
25 uals and families;

1 (C) representatives of services provider or-
2 ganizations;

3 (D) persons with leadership experience in
4 the private and voluntary sectors;

5 (E) local elected officials; and

6 (F) the general public; and

7 (2) include individuals and representatives of
8 community organizations who will help to enhance
9 the leadership role of the local government in devel-
10 oping an integrated assistance plan.

11 (d) OPPORTUNITY FOR REVIEW AND COMMENT BY
12 COMMITTEE.—Before submitting an application for ap-
13 proval of a final proposed integrated assistance plan for
14 approval under this title, a local government shall submit
15 the plan for review and comment by a Community Advi-
16 sory Committee established by the local government.

17 **SEC. 308. TECHNICAL AND OTHER ASSISTANCE.**

18 (a) TECHNICAL ASSISTANCE.—

19 (1) IN GENERAL.—The Interagency Review
20 Council may provide, or direct that the head of a
21 Federal agency provide, technical assistance to a
22 local government in developing information nec-
23 essary for the design or implementation of an inte-
24 grated assistance plan for which approval is applied
25 for under this title.

1 (2) REQUEST AND ASSURANCES.—Assistance
2 may be provided under this subsection only upon re-
3 ceipt of a request from a local government that in-
4 cludes, in accordance with requirements to be estab-
5 lished by the Interagency Review Council—

6 (A) a description of the nature of the inte-
7 grated assistance plan the local government
8 proposes to develop;

9 (B) the groups of individuals to whom ben-
10 efits will be provided under covered Federal as-
11 sistance programs under the plan; and

12 (C) such assurances as the Interagency
13 Review Council may require that—

14 (i) in the development of the applica-
15 tion to be submitted under this title for ap-
16 proval of the plan, the local government
17 will provide adequate opportunities to par-
18 ticipate to—

19 (I) low income individuals and
20 families that will receive benefits
21 under covered Federal assistance pro-
22 grams under the plan; and

23 (II) governmental agencies that
24 administer those programs; and

1 (ii) the plan will be developed only
2 after considering fully—

3 (I) needs expressed by those indi-
4 viduals and families;

5 (II) community priorities; and

6 (III) available governmental re-
7 sources in the geographic area to
8 which the plan will apply.

9 (b) DETAILS TO COUNCIL.—At the request of the
10 Chairman of the Interagency Review Council and with the
11 approval of the Secretary of a department, staff of the
12 department may be detailed to the Interagency Review
13 Council on a nonreimbursable basis.

14 **SEC. 309. INTERAGENCY REVIEW COUNCIL.**

15 (a) COMPOSITION.—There is established the Inter-
16 agency Review Council, which shall be comprised of—

17 (1) an individual appointed by the Secretary of
18 Agriculture;

19 (2) an individual appointed by the Attorney
20 General of the United States;

21 (3) an individual appointed by the Secretary of
22 Education;

23 (4) an individual appointed by the Secretary of
24 Health and Human Services;

1 (5) an individual appointed by the Secretary of
2 Housing and Urban Development;

3 (6) an individual appointed by the Secretary of
4 Labor; and

5 (7) an individual appointed by the President,
6 who shall serve as Chairperson of the Interagency
7 Review Council.

8 (b) FUNCTIONS.—The Interagency Review Council
9 shall—

10 (1) receive, review, and approve or disapprove
11 integrated assistance plans for which approval is ap-
12 plied under this title;

13 (2) pursuant to a request from an applicant for
14 such approval, direct the head of an agency which
15 administers a covered Federal program under which
16 the preponderance of Federal assistance would be
17 provided under the plan, to provide technical assist-
18 ance to the applicant;

19 (3) monitor the progress of development and
20 implementation of integrated assistance plans; and

21 (4) perform such other functions as are as-
22 signed to the Interagency Review Council by this
23 title.

1 (c) POWERS OF COUNCIL MEMBERS.—Each Inter-
2 agency Review Council member shall have the authority
3 to—

4 (1) vote on behalf of the department head who
5 appointed the member to approve or disapprove an
6 integrated assistance plan in whole or in part;

7 (2) vote on behalf of that department head to
8 waive any Federal requirements for Federal pro-
9 grams for which waiver is sought and for which
10 waiver is necessary for the success of the program.

11 **SEC. 310. DEFINITIONS.**

12 In this title—

13 (1) APPROVED INTEGRATED ASSISTANCE
14 PLAN.—The term “approved integrated assistance
15 plan” means an integrated assistance plan, or any
16 part of such a plan, that is approved by the Inter-
17 agency Review Council under section 305.

18 (2) COMMUNITY ADVISORY COMMITTEE.—The
19 term “Community Advisory Committee” means such
20 a council established in accordance with section 306
21 by a local government.

22 (3) COVERED FEDERAL ASSISTANCE PRO-
23 GRAM.—The term “covered Federal assistance pro-
24 gram” means an eligible Federal assistance program

1 that is included under an integrated assistance plan
2 of a local government.

3 (4) ELIGIBLE FEDERAL ASSISTANCE PRO-
4 GRAM.—The term “eligible Federal assistance
5 program”—

6 (A) means any Federal program under
7 which assistance is available, directly or indi-
8 rectly, to a local government to carry out a pro-
9 gram for—

10 (i) education,

11 (ii) employment training,

12 (iii) health,

13 (iv) housing,

14 (v) nutrition, or

15 (vi) other social services; and

16 (B) does not include any Federal program
17 under which assistance is provided by the Fed-
18 eral Government directly to a beneficiary of
19 that assistance.

20 (5) ELIGIBLE LOCAL GOVERNMENT.—The term
21 “eligible local government” means a general purpose
22 local government that is receiving or eligible to re-
23 ceive assistance under 1 or more covered Federal
24 programs.

1 (6) INTERAGENCY REVIEW COUNCIL.—The
2 term “Interagency Review Council” means such
3 council established under section 308.

4 (7) INTEGRATED ASSISTANCE PLAN.—The term
5 “integrated assistance plan” means a comprehensive
6 plan for the integration and administration by a
7 local government of assistance provided by the Fed-
8 eral Government under 2 or more covered Federal
9 assistance programs.

10 (8) LOCAL GOVERNMENT.—The term “local
11 government” means any subdivision of a State that
12 is a unit of general purpose local government.

13 (9) LOW INCOME.—The term “low income”
14 means having an income that is not greater than
15 200 percent of the Federal poverty income level.

16 (10) STATE.—The term “State” means the 50
17 States, the District of Columbia, Puerto Rico, Amer-
18 ican Samoa, Guam, and the Virgin Islands.

19 **SEC. 311. TERMINATION; REPORT.**

20 (a) TERMINATION.—This title shall not be effective
21 after the date that is 5 years after the date of its enact-
22 ment.

23 (b) REPORT.—The Comptroller General of the Unit-
24 ed States shall submit to the Congress, by no later than
25 4 years after the date of the enactment of this Act, a re-

1 port describing the extent to which local governments have
2 established and implemented integrated assistance plans,
3 evaluating the effectiveness of covered programs, and in-
4 cluding recommendations with respect to continuing inte-
5 grated assistance.

6 **TITLE IV—ESTIMATION OF LEG-**
7 **ISLATIVE IMPACT ON STATE**
8 **AND LOCAL GOVERNMENTS**

9 **SEC. 401. ANALYSIS BY CONGRESSIONAL BUDGET OFFICE.**

10 Section 403(a) of the Congressional Budget Act of
11 1974 is amended—

12 (1) by inserting “or conference report” before
13 “, and submit”; and

14 (2) by striking “if timely submitted to such
15 committee before such report is filed” and inserting
16 “or the joint explanatory statement accompanying
17 such conference report”.

18 **SEC. 402. RECONCILIATION INSTRUCTIONS.**

19 Section 310(a) of the Congressional Budget Act of
20 1974 is amended by striking “or” at the end of paragraph
21 (3), by striking the period and inserting “; or” at the end
22 of paragraph (4), and by inserting after paragraph (4) the
23 following:

24 “(5) direct any committee receiving an instruc-
25 tion under paragraph (1) or (2) to include the esti-

1 mate required by section 403(a) with the reconcili-
2 ation legislation that carries out such instruction.”.

3 **TITLE V—REGULATORY**
4 **FLEXIBILITY ANALYSIS**

5 **SEC. 501. JUDICIAL REVIEW.**

6 Section 611(b) of title 5, United States Code, is
7 amended in the second sentence by inserting “, and any
8 determination made by the head of a Federal agency for
9 purposes of section 605(b),” after “regulatory flexibility
10 analysis”.

○

103D CONGRESS
1ST SESSION

H. R. 1295

To improve Federal decisionmaking by requiring a thorough evaluation of the economic impact of Federal legislative and regulatory requirements on State and local governments and the economic resources located therein.

IN THE HOUSE OF REPRESENTATIVES

MARCH 10, 1993

Mr. MORAN (for himself, Mr. GOODLING, Mr. HOLDEN, Mr. CONDIT, Mr. BROWDER, Mr. DEAL, Mr. SISISKY, Mr. PAYNE of Virginia, Mr. WOLF, Ms. MCKINNEY, Mr. PENNY, Mr. WHEAT, Mr. LANCASTER, Mr. PARKER, Mr. GOODLATTE, Mr. MAZZOLI, Mr. BEREUTER, Ms. DANNER, Mr. CANADY, Mr. GREENWOOD, Mr. PICKETT, Mr. KLINK, Mr. COOPER, Mr. GENE GREEN of Texas, Mr. STENHOLM, Mr. TAYLOR of North Carolina, Mr. PETERSON of Minnesota, Mr. TAYLOR of Mississippi, Mr. BILBRAY, Mr. ROGERS, Mr. JOHNSTON of Florida, Mr. CRAMER, Mr. CRAPO, Mr. MURPHY, Mr. TRAFICANT, Mr. THOMAS of Wyoming, Mr. EMERSON, Mr. ORTON, Mr. CLINGER, Mr. MCHALE, Mrs. MEYERS of Kansas, Mr. CAMP, Mr. LEWIS of Florida, Mr. SLATTERY, Mr. LIVINGSTON, Mr. HYDE, Mr. CLEMENT, Mr. BLILEY, Mr. KANJORSKI, Mr. SPRATT, Mr. TANNER, Mr. SARPALIUS, Mr. ROSE, Mr. MCCURDY, Mr. MONTGOMERY, Mr. HOAGLAND, Mr. SWETT, Mr. ROWLAND, Mr. HALL of Texas, Mr. POSHARD, Mr. BURTON of Indiana, Mr. RAHALL, Mr. WILSON, Mr. PETERSON of Florida, Mr. PETRI, Mr. ALLARD, Mr. BUYER, Mr. COLLINS of Georgia, Mr. LaFALCE, Mr. COPPERSMITH, Mr. LIGHTFOOT, Mr. BATEMAN, Mr. ENGLISH of Oklahoma, Mr. SKEEN, and Mr. MYERS of Indiana) introduced the following bill; which was referred jointly to the Committees on Government Operations and Rules

A BILL

To improve Federal decisionmaking by requiring a thorough evaluation of the economic impact of Federal legislative

and regulatory requirements on State and local governments and the economic resources located therein.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fiscal Accountability
5 and Intergovernmental Reform Act” (“FAIR Act”).

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress finds and declares:

8 (1) Federal legislation and regulatory require-
9 ments impose burdens on State and local resources
10 to implement federally mandated programs without
11 fully evaluating the costs to State and local govern-
12 ments associated with compliance with those require-
13 ments and often times without provision of adequate
14 Federal financial assistance. These Federal legisla-
15 tive and regulatory initiatives—

16 (A) force State and local governments to
17 utilize scarce public resources to comply with
18 Federal mandates;

19 (B) prevent these resources from being
20 available to meet local needs; and

21 (C) detract from the ability of State and
22 local governments to establish local priorities
23 for use of local public resources.

1 (2) Federal legislation and regulatory programs
2 result in inefficient utilization of economic resources,
3 thereby reducing the pool of resources available—

4 (A) to enhance productivity, and increase
5 the quantity and quality of goods and services
6 produced by the American economy; and

7 (B) to enhance international competitive-
8 ness.

9 (3) In implementing Congressional policy, Fed-
10 eral agencies should, consistent with the require-
11 ments of Federal law, seek to implement statutory
12 requirements, to the maximum extent feasible, in a
13 manner which minimizes—

14 (A) the inefficient allocation of economic
15 resources;

16 (B) the burden such requirements impose
17 on use of local public resources by State and
18 local governments; and

19 (C) the adverse economic effects of such
20 regulations on productivity, economic growth,
21 full employment, creation of productive jobs,
22 and international competitiveness of American
23 goods and services.

24 (b) PURPOSES.—The purposes of this Act are:

1 (1) To assist Congress in consideration of pro-
2 posed legislation establishing or revising Federal
3 programs so as to assure that, to the maximum ex-
4 tent practicable, legislation enacted by Congress
5 will—

6 (A) minimize the burden of such legislation
7 on expenditure of scarce local public resources
8 by State and local governments;

9 (B) minimize inefficient allocation of eco-
10 nomic resources; and

11 (C) reduce the adverse effect of such
12 legislation—

13 (i) on the ability of State and local
14 governmental entities to use local public
15 resources to meet local needs and to estab-
16 lish local priorities for local public re-
17 sources; and

18 (ii) on allocation of economic re-
19 sources, productivity, economic growth, full
20 employment, creation of productive jobs,
21 and international competitiveness.

22 (2) To require Federal agencies to exercise dis-
23 cretionary authority and to implement statutory re-
24 quirements in a manner which consistent with fulfill-
25 ment of each agency's mission and with the require-

1 ments of other laws, minimizes the impact regula-
2 tions and other major Federal actions affecting the
3 economy have on—

4 (A) the ability of State and local govern-
5 mental entities to use local public resources to
6 meet local needs; and

7 (B) the allocation of economic resources,
8 productivity, economic growth, full employment,
9 creation of productive jobs, and international
10 competitiveness of American goods and services.

11 TITLE I—LEGISLATIVE REFORM

12 SEC. 101. REPORTS ON LEGISLATION.

13 (a) REPORT REQUIRED.—(1) Except as provided in
14 paragraph (2), whenever a committee of either House re-
15 ports a bill or resolution of a public character to its House
16 which mandates unfunded requirements upon State or
17 local governments or the private sector, the report accom-
18 panying that bill or resolution shall contain an analysis,
19 prepared after consultation with the Director of the Con-
20 gressional Budget Office, detailing the effect of the new
21 requirements on—

22 (A) State and local government expenditures
23 necessary to comply with Federal mandates;

1 (B) private businesses, including the economic
2 resources required annually to comply with the legis-
3 lation and implementing regulations; and

4 (C) economic growth and competitiveness.

5 (2) EXCEPTION.—The requirements of paragraph (1)
6 shall not apply to any bill or resolution with respect to
7 which the Director of the Congressional Budget Office cer-
8 tifies in writing to the Chairman of the Committee report-
9 ing the legislation that the estimated costs to State and
10 local governments and the private sector of implementa-
11 tion of such legislation during the first three years will
12 not exceed \$50,000,000 in the aggregate and during the
13 first five years will not exceed \$100,000,000 in the aggre-
14 gate. For this purpose, a year shall be a period of three
15 hundred and sixty five consecutive days.

16 (b) DUTIES AND FUNCTIONS OF CONGRESSIONAL
17 BUDGET OFFICE.—The Director of the Congressional
18 Budget Office shall prepare for each bill or resolution of
19 a public character reported by any committee of the House
20 of Representatives or of the Senate, an economic analysis
21 of the effects of such bill or resolution, satisfying the re-
22 quirements of subsection (a). The analysis prepared by the
23 Director of the Congressional Budget Office shall be in-
24 cluded in the report accompanying such bill or resolution

1 if timely submitted to such committee before such report
2 is filed.

3 (c) **LEGISLATION SUBJECT TO POINT OF ORDER.**—

4 Any bill or resolution shall be subject to a point of order
5 against consideration of the bill by the House of Rep-
6 resentatives or the Senate (as the case may be) if such
7 bill or resolution is reported for consideration by the
8 House of Representatives or the Senate unaccompanied by
9 the analysis required by this section.

10 **SEC. 102. EXERCISE OF RULEMAKING POWERS.**

11 The provisions of this title are enacted by the
12 Congress—

13 (1) as an exercise of the rulemaking power of
14 the House of Representatives and the Senate, re-
15 spectively, and as such they shall be considered as
16 part of the rules of each House, respectively, and
17 such rules shall supersede other rules only to the ex-
18 tent that they are inconsistent therewith; and

19 (2) with full recognition of the constitutional
20 right of either House to change such rules (so far
21 as relating to such House) at any time, in the same
22 manner, and to the same extent as in the case of
23 any other rule of such House.

1 **SEC. 103. EFFECTIVE DATE.**

2 This title shall apply to any bill or resolution ordered
3 reported by any committee of the House of Representa-
4 tives or of the Senate after the date of enactment of this
5 Act.

6 **TITLE II—FEDERAL INTERGOVERNMENTAL**
7 **RELATIONS**

8 **SEC. 201. GENERAL REQUIREMENTS.**

9 The Congress authorizes and directs that, to the full-
10 est extent practicable:

11 (1) the policies, regulations, and public laws of
12 the United States shall be interpreted and adminis-
13 tered in accordance with the purposes of this Act;

14 (2) all agencies of the Federal Government
15 shall, consistent with attainment of the requirements
16 of Federal law, minimize—

17 (A) the burden which rules and other
18 major Federal actions affecting the economy
19 impose on State and local governments,

20 (B) the effect of rules and other major
21 Federal actions affecting the economy on alloca-
22 tion of private economic resources, and

23 (C) the adverse effects of rules and other
24 major Federal actions affecting the economy on
25 productivity, economic growth, full employment,
26 creation of productive, and international com-

1 petitiveness of American goods and services;
2 and

3 (3) in promulgating new rules, reviewing exist-
4 ing rules, developing legislative proposals, or initiat-
5 ing any other major Federal action affecting the
6 economy, whenever an agency identifies two or more
7 alternatives which will satisfy the agency's statutory
8 obligations, the agency shall—

9 (A) select the alternative which, on
10 balance—

11 (i) imposes the least burden on ex-
12 penditure of local public resources by State
13 and local governments, and

14 (ii) has the least adverse effect on
15 productivity, economic growth, full employ-
16 ment, creation of productive jobs, and
17 international competitiveness of American
18 goods or services; or

19 (B) provide a written statement—

20 (i) that the agency's failure to select
21 such alternative is precluded by the re-
22 quirements of Federal law; or

23 (ii) that the agency's failure to select
24 such alternative is consistent with the pur-
25 poses of this Act.

1 **SEC. 202. INTERGOVERNMENTAL AND ECONOMIC IMPACT**
2 **ASSESSMENT.**

3 (a) **REQUIREMENT.**—Whenever an agency publishes
4 a general notice of proposed rulemaking for any proposed
5 rule, and before initiating any other major Federal action
6 affecting the economy, the agency shall prepare and make
7 available for public comment an Intergovernmental and
8 Economic Impact Assessment. Such Assessment shall be
9 published in the Federal Register at the time of the publi-
10 cation of general notice of proposed rulemaking for the
11 rule or prior to implementing such other major agency ac-
12 tion affecting the economy.

13 (b) **CONTENT.**—Each Intergovernmental and Eco-
14 nomic Impact Assessment required under this section shall
15 contain—

16 (1) a description of the reasons why action by
17 the agency is being considered;

18 (2) a succinct statement of the objective of, and
19 legal basis for, the proposed rule or other action;
20 and

21 (3) a description and an estimate of the effect
22 the proposed rule or other major Federal action will
23 have on—

24 (A) expenditure of State or local public re-
25 sources by State and local governments,

26 (B) allocation of economic resources, and

1 (C) productivity, economic growth, full em-
2 ployment, creation of productive jobs, and inter-
3 national competitiveness of American goods and
4 services.

5 (c) **ALTERNATIVES CONSIDERED.**—Each Intergov-
6 ernmental and Economic Impact Assessment shall also
7 contain a detailed description of any significant alter-
8 natives to the proposed rule or other major Federal action
9 which would accomplish applicable statutory objectives
10 while reducing—

11 (1) the need for expenditure of State or local
12 public resources by State and local governments; and

13 (2) the potential adverse effects of such pro-
14 posed rule or other major Federal action on produc-
15 tivity, economic growth, full employment, creation of
16 productive jobs, and international competitiveness of
17 American goods and services.

18 **SEC. 203. INTERGOVERNMENTAL AND ECONOMIC IMPACT**
19 **STATEMENT.**

20 (a) **REQUIREMENT.**—When an agency promulgates a
21 final rule or implements any other major Federal action
22 affecting the economy, the agency shall prepare an Inter-
23 governmental and Economic Impact Statement. Each
24 Intergovernmental and Economic Impact Statement shall
25 contain—

1 (1) a succinct statement of the need for, and
2 the objectives of, such rule or other major Federal
3 action;

4 (2) a summary of the issues raised by the pub-
5 lic comments in response to the publication by the
6 agency of the Economic Impact Assessment, a sum-
7 mary of the agency's evaluation of such issues, and
8 a statement of any changes made in the proposed
9 rule or other proposed action as a result of such
10 comments;

11 (3) a description of each of the significant alter-
12 natives to the rule or other major Federal action af-
13 fecting the economy, considered by the agency,
14 which, consistent with fulfillment of agency statutory
15 obligations, would—

16 (A) lessen the need for expenditure of
17 State or local public resources by State and
18 local governments; or

19 (B) reduce the potential adverse effects of
20 such proposed rule or other major Federal ac-
21 tion on productivity, economic growth, full em-
22 ployment, creation of productive jobs, and inter-
23 national competitiveness of American goods and
24 services,

1 along with a statement of the reasons why each such
2 alternatives was rejected by the agency; and

3 (4) an estimate of the effect the rule or other
4 major Federal action will have on—

5 (A) expenditure of State or local public re-
6 sources by State and local governments; and

7 (B) productivity, economic growth, full em-
8 ployment, creation of productive jobs, and inter-
9 national competitiveness of American goods and
10 services.

11 (b) AVAILABILITY.—The agency shall make copies of
12 each Intergovernmental and Economic Impact Statement
13 available to members of the public and shall publish in
14 the Federal Register at the time of publication of any final
15 rule or at the time of implementing any other major Fed-
16 eral action affecting the economy, a statement describing
17 how the public may obtain copies of such Statement.

18 **SEC. 204. EFFECT ON OTHER LAWS.**

19 The requirements of this title shall not alter in any
20 manner the substantive standards otherwise applicable to
21 the implementation by an agency of statutory require-
22 ments or to the exercise by an agency of authority dele-
23 gated by law.

1 **SEC. 205. EFFECTIVE DATE AND EXEMPTION.**

2 This title shall apply to any rule proposed, any final
3 rule promulgated, and any other major Federal action af-
4 fecting the economy implemented by any agency after the
5 date of the enactment of this Act. This title shall not apply
6 to any agency which is not an agency within the meaning
7 of section 551(1) of title 5, United States Code.

○

Mr. MICA. Thank you, Mr. Chairman. I do want to take a moment and express my appreciation and gratitude for your convening this hearing and bringing before the Congress and also before the American people the important question of unfunded Federal mandates, and I just have a couple of comments.

First of all, I think we know, for the record, that the greatest single factor increasing State and local government taxes today is unfunded Federal mandates that are passed onto State and local governments. It is interesting that this subcommittee has already conducted hearings on this particular problem.

There are two hearings that I will never forget the comments at. One was comments in Harrisburg, PA, the capital of Pennsylvania, where we had a hearing where local government officials testified to our subcommittee that "It would be cheaper to deliver bottled water to each home rather than comply with the costs of additional Federal Government regulations."

It was quite astounding to hear that commentary from local Pennsylvania officials. And then when we held a hearing in central Florida another local government official made a very, very profound statement. I think it is something the Congress and this committee should pay attention to.

He said, "If it is important enough for Congress to pass, then it is important enough for Congress to fund," which sort of sums it all up, and doesn't in fact pass that burden on to State and local governments for their implementation and passing on that cost to the local taxpayers.

What you see also in Congress is probably a backlash to unfunded Federal mandates combined with the lack of risk assessment and lack of—disregard for property rights which has, in fact, created what is now referred to as the Unholy Trinity.

I know Mr. Condit has been actively involved as a leader on the unfunded mandates issue, and also the ranking member of our committee, Mr. Clinger, has also taken a lead in that. So I am anxious to hear their testimony and their solutions for a possible resolution of this problem, which certainly is now in the forefront of the Congress.

Thank you again, Mr. Chairman. I yield back.

Mr. TOWNS. Thank you very much, Congressman Mica.

At this time I would yield to Congressman Waxman.

Mr. WAXMAN. Thank you very much, Mr. Chairman. I want to thank you for holding this hearing. It gives us a chance to talk about the role of government in America, what people expect from government, and who is going to pay for it. And I just don't mean the Federal Government, I mean government at all levels, Federal, State, and local.

I believe the government has certain responsibilities. It should assure the safety of its citizens. It should educate the young. It should protect the health of the public.

The real issue is not whether the Federal Government is mandating something on States or localities. The real issue is which level of government has what responsibility and how the cost of carrying out that responsibility is distributed when different levels share it. Let me give you two examples: safe drinking water and health care for poor mothers and children.

I think most Americans would agree that one of the responsibilities of government is to assure that the water that all of us drink is safe. This is true even where the water supplier is a municipality. We know what happens when the water we drink isn't safe. Just ask the residents in Milwaukee.

In March 1993 that city's water supply was contaminated with an intestinal parasite that made more than 400,000 people ill. For a week, 800,000 residents were without potable tap water. Drinking water became a precious commodity. In the end, more than 80 people died. Many remain seriously ill even today.

Some people want to talk about safe drinking water in the context of unfunded mandates. But that is not the real issue. The real issue is whether government has a responsibility to assure safe drinking water and which level of government should pay for it.

Those who are concerned about the fiscal burden on State or local governments should support more Federal funding to help them meet minimum safe water standards. They should not be proposing to gut the minimum standards, thereby exposing all Americans to the risk of serious illness or even death from unsafe drinking water.

Mr. Mica used an example of a hearing which he attended, which I did not, where a local water supplier said that it would be cheaper to have bottled water than to comply with the standards. If that is the only way they can get safe drinking water to people then that is what they ought to do.

But the answer to the cost of making sure the water is safe is not to deliver unsafe water, whether it is at the State or local level. We shouldn't repeal laws that are set to protect the public. If the laws don't work, if mandates are unreasonable, then we ought to change those requirements. But if requirements are reasonable, then we ought to help pay for them. And we certainly shouldn't weaken those standards.

My second example has to do with the health of pregnant women and infants. Again, I think most Americans believe that pregnant women should have access to prenatal care so that their babies have a healthy start in life. I also believe that in the case of poor pregnant women most Americans believe that the government has the responsibility for assuring that they have this access either through public hospitals, public clinics, or public payments to private doctors and hospitals. Without prenatal care, poor women are at greatest risk for infant and maternal mortality.

There is a government program that buys health care for the poor. It is called Medicaid, and it is administered by the States within broad Federal guidelines. Poor pregnant women and their infants are among the Americans who are entitled to coverage under this program.

Now, some have objected to the requirement in the Medicaid program that States should extend coverage to pregnant women and infants with incomes at or below 133 percent of the Federal poverty level. This is called an unfunded mandate, and some would like to see it repealed.

Now, my problem with this is that this requirement is not a mandate, and it is hardly unfunded. No State is required to participate in the Medicaid program, although all of them have chosen to

do so. Why? Because they want Federal Medicaid funds to help them pay for medical and long-term care that their low income families and elderly and disabled need.

In more affluent States the Federal Government pays half the cost. In poorer States as much as 80 percent of the dollars come from the Federal Government. In effect, the Federal Government says to the States, if you want money to help pay for nursing home care for the elderly or special services for the mentally retarded, which, by the way, were State responsibilities almost entirely before the Medicaid program was adopted, you have to provide coverage for prenatal care for pregnant women. If you do that the Federal Government will on average cover more than half, 57 percent, of your costs.

My point is this: It is important that we hear the range of views on unfunded mandates. It is important that when we legislate we recognize the fiscal problems that States and localities now face. But sloganeering about unfunded mandates takes us in the wrong direction, lumping everything into one cliché, whether it be a program like Medicaid where the State has the option to accept or not accept the Federal requirements and the Federal dollars or safe drinking water where we are simply trying to make sure that the water is safe and to share that responsibility with the local suppliers. These questions are not all the same, and we ought not to treat them all the same.

I hope that as this subcommittee considers the unfunded mandate bills that we discuss here today we will move beyond the rhetoric to the real issue: what is the responsibility of government and how are the costs to be shared when different levels of government are involved?

I think this hearing will serve a very useful purpose. I know we have many of our colleagues before us today to share their views. And I look forward, if not to being here to hear their views, then to reviewing the record with you, Mr. Chairman.

Mr. TOWNS. Thank you very much, Congressman Waxman.

At this time I would yield to Congressman Portman, a very active member of this committee.

Mr. Portman.

Mr. PORTMAN. Thank you, Mr. Chairman. I would like to add to the comments of my colleagues in thanking you for having this hearing. I would like to thank my colleagues who are here today who have introduced legislation in this area, and in the interest of getting to their testimony, I will be brief. I would like to submit a statement for the record.

Mr. TOWNS. Without objection, it will be included in the record.

Mr. PORTMAN. I would just like to say again this is a major issue that concerns me greatly. It is my view that it is a dishonest way that Congress gets around doing what Congress cannot afford to do.

I understand the comments of my colleague from California and there are probably some areas where unfunded mandate is used as a blanket term to apply to areas where it shouldn't be. But on the other hand, we just hear story after story where Congress actually is asking State and local government to pick up costs for things that Congress couldn't afford to do on its own, and we ought to be

honest about it. If it is an important enough thing to do, Congress ought to pay for it.

The estimates are, as most of you know, that unfunded mandates now cost roughly \$430 billion annually. In my own State of Ohio we have seen these costs firsthand. Our Governor, George Voinovich, has taken an active role in the National Governor's Association and has really been a leader in this effort. He issued a report last fall that estimated the costs in Ohio to be \$1.74 billion, in Ohio alone, between 1992 and 1995.

In that report he gives a lot of examples, some of which I have talked about on the floor, but they would include, as an example, that Ohio communities test for a herbicide used on cotton. Cotton is not grown in the State of Ohio. He also brings up the example of the Safe Drinking Water Act, a mandate included in there is that each Ohio community test for 83 chemicals some of which are simply no longer in use, at least in the State of Ohio.

I would hope, Mr. Chairman, that in a future hearing we could hear from the Governor directly, I know he is interested in coming and talking to us, and from other State and local officials from around the country who deal with the consequences of unfunded mandates on a daily basis.

Again, Mr. Chairman, I applaud you for having this hearing and look forward to the testimony from my colleagues.

[The prepared statement of Mr. Portman follows:]

Statement of Representative Rob Portman

on

Unfunded Federal Mandates

Subcommittee on Human Resources and Intergovernmental Relations

of the

House Committee on Government Operations

May 18, 1994

Thank you, Mr. Chairman. Thank you for holding this very important hearing today concerning legislation on unfunded federal mandates.

As a member of the Congressional Caucus on Unfunded Mandates, I welcome this opportunity to hear testimony from Members of Congress who have introduced legislation to eliminate the federal government's common practice of imposing crippling obligations on state and local governments without providing the resources to carry them out. Unfunded federal mandates are an all too easy -- and dishonest -- way around increasing federal spending and expanding the federal deficit, where Congress accepts credit for legislation but sidesteps the costs. These mandates are estimated to cost Americans more than \$430 billion annually.

In Ohio, we have seen these costs firsthand. Ohio's governor, George Voinovich, has been a leader in the fight against unfunded federal mandates. Last fall, Governor Voinovich released a report detailing the costs to Ohio in complying with federal mandates, estimated to total \$1.74 billion between 1992

and 1995. In his report, the Governor gives numerous examples of questionable federal rules, such as the requirement that Ohio communities test for an herbicide used on cotton, which is not grown in Ohio, and the Safe Drinking Water Act mandate that each Ohio community test drinking water for 83 chemicals, many of which are no longer in common use.

I would hope at a future hearing we would have the opportunity to hear firsthand from the Governor and other state and local officials from around the country who deal with the consequences of our unfunded mandates every day.

Again, Mr. Chairman, I applaud you for moving forward on this critical issue and I look forward to hearing the testimony today.

Mr. TOWNS. Thank you very much, Congressman Portman, for your statement. And let me assure you that we will be hearing from anybody and everybody because we think that this issue is very, very important. So you can be assured before we move forward that we will be talking to Governors.

Of course, we have already had a lot of State legislators in and, of course, county legislators in as well, and we will continue that dialog to make certain that everybody has had an opportunity to have the input, because I think it is a very serious issue that we are dealing with.

Let me move forward by calling on Congressman Clinger, the ranking member of the Government Operations Committee, and also has a bill pending.

STATEMENT OF HON. WILLIAM F. CLINGER, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. CLINGER. Mr. Chairman, I thank you very much for holding this hearing, and thank you for your leadership in this area and the hearings that you have already held considering this very complex, very difficult issue. I particularly want to thank you for coming to Pennsylvania and listening to some of the local elected officials and the problems that they were having dealing with some of the unfunded mandates.

I would ask unanimous consent that my full statement might be entered in the record.

Mr. TOWNS. Without objection, your entire statement will be included in the record and you can move forward in summarizing.

Mr. CLINGER. Thank you, Mr. Chairman.

I was pleased to join with you a few months ago when we had the first of these hearings considering America's urban crisis, and you may recall that Majority Leader Richard Gephardt testified at that hearing that perhaps Congress should "clear out the regulatory underbrush" of existing mandates that have overburdened our cities, and I certainly could not agree more with that statement.

But I also remember that you, Mr. Chairman, had sincere doubts that Congress has the time or indeed the desire to fight old battles by revisiting laws already on the books, and in my opinion you are right about that as well.

So the question for me and the issue that presented itself to me then was to balance the need to clean out the underbrush that Congressman Gephardt talked about and a Congress that is unwilling or unable or too busy to do that. And I believe I have an answer in my bill, which is H.R. 886, the Mandate and Community Assistance Reform Act.

Basically, this bill establishes a Presidentially appointed Commission on Unfunded Mandates. The Commission is given nearly 2 years to review existing mandates and to identify, first, mandates that should or could be terminated because they are duplicative or obsolete, have outlived their usefulness; second, mandates that can be suspended during times of recession because they exacerbate the fiscal difficulties of States and localities; and third, planning or re-

porting requirements of mandates that should be or could be consolidated or simplified.

And I recognize that some of my colleagues believe we already have too many commissions, and I would agree with that. But this Commission really does have teeth in it.

It is modeled after the Base Closure Commission, because its recommendations would take effect automatically unless Congress would enact a joint resolution disapproving them within 60 days. The bill provides that the Commission's recommendations be rejected or accepted as a package—that is, all or nothing.

Again, as I say, there is no pride of authorship here. This was copied after the Base Closing Commission, which gives the Commission, I think, the authority to act.

This bill requires the Commission to base its recommendations on criteria issued in consultation with this committee, House Government Operations Committee, and the Senate Governmental Affairs Committee, which ensures that the Congress is not going to be excluded from the process but will be involved at a very early stage in determining whether the recommendations should be accepted.

The bill requires the Commission to issue a preliminary report and hold public hearings on the recommendations before a final report is issued to the President and Congress.

I want to note at this point that I am committed to amending the bill to exempt civil rights mandates from the work of the Commission. I sincerely doubt that the Commission would regard civil rights requirements as duplicative or obsolete. But I think all parties would be more comfortable if the bill stated explicitly that achievements in the area of civil rights are not open for discussion or elimination.

Title III in my bill allows local governments to seek Federal waivers to design community-based programs using available Federal resources. Now, this language was adopted in the Senate as an amendment to S. 4 and I am optimistic we will be able to keep this measure in the House and Senate conferences.

I want to give credit to my colleague Mr. Shays for title IV of this bill. Mr. Shays originally crafted the proposal. This title closes loopholes in the Congressional Budget Act which enable unfunded mandates to be included in legislation in the absence of Congressional Budget Office estimates of their impacts on States and localities.

Finally, Mr. Chairman, I have included a modest provision in my bill to improve implementation of the Regulatory Flexibility Act. Title V would amend the act by providing that if an agency head certifies that a rule will not have a significant impact on small governments and businesses, that certification must comprise part of the whole rulemaking record for purposes of judicial review of the rule.

Mr. Chairman, my bill and the measures proposed by my colleagues who will be testifying this morning are not incompatible. They really make a whole. They complement one another by addressing future, present, and past mandates and their impact on State and local governments. Each I think has benefits and pre-

sents real potential for improving the sorry state of federalism as it exists today.

Mr. Chairman, I would just like to say in closing that I would welcome the opportunity to work with you and the colleagues on the subcommittee, and on the full committee, in a bipartisan effort—hopefully, it could be a bipartisan effort—to address what is becoming an increasingly serious problem for State and local governments, and for the Federal Government for that matter.

And I would agree with Mr. Waxman that this is not an easy issue. It is a complex issue. It is one of where you put the responsibility. But I would think in this instance at least we do have on the books a lot of mandates and requirements that have outlived their usefulness and we should look at that as a first step in addressing this problem.

Thank you very much.

Mr. TOWNS. Thank you very much. And also let me again thank you for the work that you are doing in this area.

[The prepared statement of Mr. Clinger follows:]

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ONE HUNDRED THIRD CONGRESS

Congress of the United States House of Representatives

COMMITTEE ON GOVERNMENT OPERATIONS

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INDEPENDENT

MAJORITY—(202) 225-8081
MINORITY—(202) 225-5074

TESTIMONY OF THE HONORABLE WILLIAM F. CLINGER, JR. RANKING MINORITY MEMBER COMMITTEE ON GOVERNMENT OPERATIONS Before the HUMAN RESOURCES AND INTERGOVERNMENTAL RELATIONS SUBCOMMITTEE HEARING ON UNFUNDED FEDERAL MANDATES May 18, 1994

Mr. Chairman, several months ago I joined your subcommittee for a hearing on America's urban crisis. You may recall that House Majority Leader Richard Gephardt testified at that hearing that perhaps Congress should "clear out the regulatory underbrush" of existing mandates that have overburdened our cities. I could not agree more. But I also remember that you, Mr. Chairman, had sincere doubts that Congress has the time or the desire to fight old battles by revisiting laws already on the books. And in my opinion, you are right, too. The question for me, then, was to balance the need to clean out the underbrush and a Congress that is unwilling or unable to do so. And I believe I have an answer in my bill, H.R. 886, the Mandate and Community Assistance Reform Act.

H.R. 886 establishes a presidentially-appointed commission on unfunded mandates. The commission is given nearly two years to review existing mandates and to identify

- 1) mandates that should be terminated because they are duplicative or obsolete;
- 2) mandates that can be suspended during times of recession because they exacerbate the fiscal difficulties of states and localities; and
- 3) planning or reporting requirements of mandates that should be consolidated or simplified.

I recognize that some of my colleagues believe we already have too many commissions, but this commission has teeth because its recommendations take effect automatically unless Congress enacts a joint resolution disapproving them within 60 days. The bill provides that the commission's recommendations be rejected or accepted as a package - that is, "all or nothing."

Mr. Chairman, you are right that it is politically and practically impossible for Congress to revisit existing mandates. There are quite literally hundreds of mandates out there, each with its own constituency, and we have neither the time nor the resources to review each one. This is why I propose a commission to do the job for us.

Let me emphasize that H.R. 886 is not a sneak attack on particular mandates. Quite simply, I think we need to review the statutory and regulatory mandates imposed over the past two decades to ensure that the conditions behind them are still valid. Communities are required to test soil regularly for pesticides and other contaminants that have been banned for over a decade. Is this necessary? In Pennsylvania, the typical county caseworker spends half his or her time doing paperwork. Is all this paperwork necessary? Is it useful for Arizona to be bound by the same groundwater regulations that apply in Florida? I feel these are valid questions the commission would be bound to answer.

H.R. 886 requires the commission to base its recommendations on criteria issued in consultation with the House Government Operations and Senate Governmental Affairs Committees. This ensures that Congress is not excluded from the process but brought in at an early stage. The bill requires the commission to issue a preliminary report and to hold public hearings on the recommendations before a final report is issued to the President and Congress.

I do want to note that I have committed to amending the bill to exempt civil rights mandates from the work of the commission. While I sincerely doubt that the commission would regard civil rights requirements as "duplicative" or "obsolete", I think all parties would

be more comfortable if the bill stated explicitly that achievements in the area of civil rights are not open for discussion.

Title III of my bill is related to mandates only on the periphery. Chairman Conyers and I introduced this title as a separate bill, H.R. 2856, the Local Flexibility Act. This subcommittee held a hearing on that bill last October. In summary, the provision allows local governments to seek federal waivers to design community-based programs using available federal resources. This language was adopted in the Senate as an amendment to S. 4, and I am optimistic we will be able to keep this measure in the House and Senate conference.

I must give credit for Title IV of H.R. 886 to another Member of this Committee, Congressman Shays, who originally crafted the proposal. This title closes loopholes in the Congressional Budget Act which enable unfunded mandates to be included in legislation in the absence of Congressional Budget Office estimates of their impact on States and localities. It also requires cost estimates to accompany conference reports and budget reconciliation bills. The current framework for estimating costs on state and local governments is wholly inadequate, as current estimates - when they are done - do not include changes made through floor amendments or in conference. At the very least, Members should know the impact their votes will have on localities back home. This provision will ensure such information is available.

Finally, I have included a modest provision in my bill to improve implementation of the Regulatory Flexibility Act. Title V of my bill amends the Act by providing that if an agency head certifies that a rule will not have a significant impact on small governments and businesses, that certification must comprise part of the whole rulemaking record for purposes of judicial review of the rule. My hope is that this will prompt agencies to give more careful consideration to the impact of rules on small entities.

My bill and the measures proposed by my colleagues, Reps. Condit, Goodling, and

Moran, are not incompatible. To the contrary, they complement one another by addressing future, present and past mandates and their impact on state and local governments. Mr. Condit's bill is straightforward, requiring that any new mandates be funded mandates. For obvious reasons, this proposal has become the favorite among state and local interest groups. The FAIR Act introduced by Mr. Goodling and Mr. Moran is an innovative proposal to ensure Congress and the Executive Branch know the impact of statutory and regulatory mandates on states, localities and the private sector. My bill looks back to reconsider what has already been done. Each has benefits and presents real potential for improving the sorry state of federalism today.

Let me add my opinion that mandate relief legislation should attempt to define the term "unfunded mandate." Anyone who has tried knows how difficult it is to come up with an adequate definition. The Advisory Commission on Intergovernmental Relations is substituting the term "federally induced costs", because the word "mandate" leaves questions as to whether programs like Medicaid are included. The web of Medicaid requirements is a major burden on states, yet technically Medicaid is considered "optional" because states can opt not to participate. Of course, their taxpayers are still helping fund the program. So is this a "mandate"? Defining the issues must be part of any mandate relief legislation.

Mr. Chairman, I would like to say for the record that I would welcome the opportunity to work with you and our colleagues here this morning in a bipartisan effort at passing mandate relief legislation. I am open to suggestions on my legislation, as I hope we all are, and I hope the group of Members here today can agree on mandate relief legislation that a majority in Congress can support.

Thank you, Mr. Chairman.

Mr. TOWNS. At this time I would call on Congressman Gary Condit, chairman of the Subcommittee on Information, Justice, Transportation, and Agriculture.

Mr. CLINGER. Mr. Chairman, may I just interrupt and ask if I may be permitted to leave. I have a markup downstairs.

Mr. TOWNS. Well, 1 second. Let me just check to see if any members have any quick questions they might ask.

Mr. PORTMAN. Just a very quick one.

Congressman Clinger, my question is who would comprise the Commission and how would it be appointed and so on?

Mr. CLINGER. The 8-member Commission would be appointed by the President, with Senate confirmation, from individuals with leadership experience in State and local government.

Mr. PORTMAN. It will be all private sector membership then?

Mr. CLINGER. Yes.

Mr. PORTMAN. No Members of Congress or members of the administration?

Mr. CLINGER. Because of the Commission's self-enacting recommendations, it would be unconstitutional to have Members of Congress serve on the Commission.

And again as I indicated, the Congress would have review of the Commission's recommendations.

Mr. PORTMAN. OK. Thank you.

Mr. TOWNS. Mr. Waxman.

Mr. WAXMAN. Well, I thank you for a very thoughtful statement. I don't think any of us would want to justify mandates that are on the books that serve no purpose and only cost money at the local government, and I think we need to review those.

I think we constantly need to review our actions to be sure that we are really accomplishing what we seek to accomplish. And I do think at times we need to have a cooperative effort by the Federal and local governments.

In your statement you cite the importance of the civil rights laws. Yet some of the biggest complaints I get are the requirements to comply with the Americans for Disability Act by businesses and local governments.

I think that was a good law that we passed, but I think we always ought to continue to review it. In our efforts to accomplish worthwhile goals we should not put unnecessary burdens on Federal, State, or local governments or businesses.

So I sympathize with what you are saying, and I certainly would want to work with you to make sure that we eliminate problems without eliminating important laws that are set there to protect the American people in ways that reflect our values and reflect the needs of the people.

Mr. TOWNS. Let me also indicate—let me just yield to Congressman Mica first.

Mr. MICA. Well, before you leave, Mr. Clinger, I just wanted you to take back a message of hope to the people in Harrisburg that in fact we will not have to deliver our water through a bottled water system which will be cheaper because we can do a better job at looking at the risk involved, and we can, as my colleague Mr. Portman has pointed out, also examine some of these mandates that we have set in motion that extend extensive unnecessary costs

to local governments. So there is a better way that my colleague from California points out.

Thank you.

Mr. CLINGER. Well, I will just commend you on the leadership you are taking in the whole risk assessment issue, which is a related but separate issue.

And in response to Mr. Waxman, I think the only thing that has struck me is that we—it is sort of an accretion over the years. We keep adding things and we have not really looked back and seen, OK, some of these things really have outlived their usefulness or have become redundant or whatever, and that is the whole purpose of my proposal.

Mr. TOWNS. Let me just again thank you for your testimony and say to you that I am happy that you feel the same as I do in reference to the civil rights issues not being included.

However, I must also say, though, that when we look at appointing a Commission, and if it is all Members of Congress, then I think that I could sort of be supportive of it. But I just have difficulty giving up power. That is something I am very sensitive to. And I think if the Commission should be just Members of Congress, and not, you know, in terms of—I think that I could be supportive of that.

But I look forward to working with you in a bipartisan way to come up with some legislation that we feel would be able to deal with this problem. It is a very serious problem, as we talk to people in county government and State government, so I understand it.

Mr. CLINGER. Thank you very much, Mr. Chairman.

Mr. TOWNS. Thank you very much for your testimony.

STATEMENT OF HON. GARY A. CONDIT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. CONDIT. Mr. Chairman, I want to commend you and the subcommittee for convening today's hearing and past hearings on unfunded Federal mandates.

At issue today is nothing less than the financial well-being of cities, counties, schools, and States. The recent onslaught of unfunded mandates that the Federal Government has imposed upon local units of governments is the most important issue facing our cities, counties, States, and local jurisdictions.

Although we have heard a lot of talk about the issue in the Congress, it has been my observation that very little action has been taken. I sincerely hope that this hearing represents a new commitment by the Congress to actively evaluate the various proposals that have been introduced on this subject and today report out a bill that will grant some sort of relief to States and local governments.

We are discussing a fairness issue here this morning. Is it fair for Congress to make a law and then ask someone else to pay for them. As a former mayor, a former county supervisor, a former State legislator, I can tell you that shifting the cost of Federal policy to our lower level of government is wrong and unfair.

It is unfair because unfunded Federal mandates that are imposed on localities without consideration of local priorities, budget or capacity to implement, therefore each time a new unfunded

mandate is enacted State and local government must raise local taxes and/or cut local services, in other words, to finance the mandate.

Every local dollar spent on Federal mandates is \$1 less in local budgets to fight crime, improve education, provide public health services, and to enhance transportation services.

And let me just give you an example of my own district. Consider Merced County, a small county in the middle of California, and the 18th Congressional District. The county in order to compensate for moneys spent on an unfunded Federal mandate has taken the unprecedented steps of closing libraries and neglecting the upkeep on their parks.

The County Board of Supervisors have told the community that a one-half cent increase in the local sales tax will be necessary to restore the libraries and the parks. Since the sales tax increase must be approved by the ballot initiative, however, it is highly unlikely that the residents of Merced County will approve yet another tax increase.

Unfunded Federal mandates are wrong because they are literally, literally bankrupting States and local governments. The National Conference of State Legislators estimates that the 101st Congress enacted 20—20—laws that will result in \$15 billion in direct costs to State budgets over the next 5 years. The National Association of Counties in a recent national survey of its members found that counties will spend an estimated \$33.7 billion over the next 5 years on only 12 specific Federal mandates. And the American Legislative Exchange Council found that estimates of the annual cost of complying with unfunded Federal mandates may be as high as several hundred billion dollars.

Without our partners at the State and local level, we cannot govern this Nation. Unless we provide relief from these expensive mandates, I can guarantee you that we will find more and more cities and towns unable to meet their basic obligation to their residents.

I do not believe this is what our Founding Fathers had in mind when they wrote the 10th Amendment of the Constitution. I certainly do not think that they ever envisioned the Federal Government using its authority to impose increasing numbers of costly Federal mandates on States and local governments, but that is exactly what we are facing.

Because of this reality leaders at the State and local level have been sending Congress a simple message: Stop the practice of passing the bill and then passing the buck. They are holding out hope that this subcommittee, Mr. Chairman, and the Members and Congress will understand their plight and their financial burden they face because of unfunded Federal mandates.

Current laws on unfunded Federal mandates are woefully inadequate and ineffective. The State and Local Government Cost Estimate Act of 1981 is the only law that I am aware of that presently seeks to constrain Congress' ability to pass unfunded Federal mandates.

This law requires the Congressional Budget Office to prepare an estimate on the costs that will be incurred by a State and local government in carrying out or complying with any significant bill or

resolution reported out of a congressional committee. The CBO, State and local government cost estimates, however, are only performed for legislation that will result in an annual cost of \$200 million or more or is likely to have an exceptional financial consequence for a particular geographical region or level of government.

Under this law all the measures that attempt to address this problem by using a fiscal note, it is argued, the Members of Congress will be reluctant to enact new unfunded mandates once they are made aware of the cost to State and local governments.

However, the present CBO Director has acknowledged that the current fiscal note requirement is ineffective in preventing now unfunded mandates. CBO Director Robert Reischauer said that CBO's estimates of State and local costs have little or no impact on legislative outcome. With few exceptions, Congress debates on proposed legislation having not focused on CBO's State and local cost estimate.

Given these remarks and the current situation that we find ourselves in today, I believe that we can conclude that current law on this issue is not working and needs to be improved. The National Performance Review, which was released with such fanfare and praise this past fall, specifically calls for Congress to refrain from the practice of enacting unfunded Federal mandates.

There are only two ways, Mr. Chairman, to put an end to unfunded Federal mandates. One is not to enact unfunded Federal mandates. The other is to fund the mandates that are enacted. This is not the time nor place to discuss the merits, in my opinion, of the Clean Water Act, the Clean Air Act or other worthy pieces of legislation. Those discussions should be taken into a different arena.

But, Mr. Chairman, we need to find a way to ensure that we fund all the future mandates that we are going to place on State and local governments. Since there are really no constraints on the ability of Congress to shift the cost of policy decisions to State and local governments, we can take an issue, debate it, debate it forcefully and passionately, and then resolve to do something about it, but not be responsible for the price tag.

In other words, Congress gets to feel good about taking some action, local government officials get to pick up the tab. Instead, I believe the Congress should set the policy but the Congress should also pay for the policy it sets.

To that end, I have introduced H.R. 140, the Federal Mandate Relief Act. For those of you who are unfamiliar with this bill, it very simply states that compliance with unfunded mandates by State and local government will be voluntary unless the Federal Government reimburses States and local governments for the costs associated with carrying out the mandate requirement.

This bill embodies the philosophy of no money, no mandate. Currently H.R. 140 has been cosponsored by 220 Members of the House. The Senate's version to this bill, introduced by Senator Dirk Kempthorne, has 54 cosponsors.

My bill is unanimously supported by the six national associations representing State and local governments. These groups are the National Governors Association, the National Conference of Legis-

lators, Council of State Governments, the U.S. Conference of Mayors, the National Association of Counties, and the National League of Cities. In fact, H.R. 140 is the leading bill in the House that promises to end future unfunded Federal mandates.

This bill is not retroactive. Why do I believe that H.R. 140 is the ideal solution to the problem of unfunded Federal mandates?

First, by requiring the Federal Government to fund its mandates, H.R. 140 will compel us to prioritize regulatory requirements to match available Federal resources.

Second, it will also encourage more efficient and flexible regulations. If the Federal Government is required to fund its mandate you will see an end to broadly imposed, one-size-fits-all regulation that requires municipalities in various parts of the country to meet the same Federal standards even though the local conditions in these municipalities are vastly different.

The current standards-setting process of the Safe Drinking Water Act is a perfect example of an unwieldy mandate that imposes requirements on localities irrespective of local conditions and circumstances.

Finally, funding the edicts that we pass here in Washington is the right and fair thing to do. If laws are important enough to pass, then they should be important enough to pay for. Congress needs to own up to its responsibilities. H.R. 140 does just that.

Mr. TOWNS. Congressman.

Mr. CONDIT. Mr. Chairman, I am just going to finish up here.

Mr. TOWNS. Because we have a joint meeting at 11 o'clock.

Mr. CONDIT. I have got just a paragraph and I will finish up.

Mr. TOWNS. Thank you.

Mr. CONDIT. Let me reiterate my belief that this issue is not going to go away. In fact, with health care reform and welfare reform on Congress' agenda, the problem of unfunded Federal mandates will probably get worse. Sooner or later we will have to deal with this issue.

And I thank you and this subcommittee for allowing us the opportunity to testify before you today.

And I would just briefly say that my colleagues sitting up here today are carrying the leading legislation in dealing with unfunded Federal mandates. Each of them in their own way are dealing with this issue in a very constructive and positive way. And I would ask you to work with us as we continue down this path and hopefully mark up a piece of legislation that remedies the problem of unfunded Federal mandates.

And I thank you very much, and I will stay here to answer any questions that you may have.

[The prepared statement of Mr. Condit follows:]

**STATEMENT OF CONGRESSMAN GARY CONDIT
before the House Government Operations Subcommittee
on Human Resources and Intergovernmental Relations**

May 18, 1994

Mr. Chairman, I want to commend you and this subcommittee for convening today's hearing on unfunded federal mandates. At issue today is nothing less than the financial well-being of cities, counties, schools, and states.

The recent onslaught of unfunded mandates that the federal government has imposed upon local units of government is the most important issue facing our cities, counties, states, and other local jurisdictions.

Although we have heard a lot of talk about this issue in the Congress, it has been my observation that very little action has been taken. I sincerely hope that this hearing represents a new commitment by the Congress to actively evaluate the various proposals that have been introduced on this subject, and to report out a bill that will grant some sort of relief to our state and local governments.

We are discussing a fairness issue here this morning. Is it fair for Congress to make laws and then make someone else pay for them?

As a former mayor, a former county supervisor, and a former state legislator, I can tell you that shifting the cost of federal policy to our lower levels of government is wrong and unfair.

It is unfair because unfunded federal mandates are imposed on localities without consideration of local priorities, budgets, or capacity to implement. Therefore, each time a new unfunded mandate is enacted, state and local governments must raise local taxes and/or cut local services in order to finance the mandate. Every local dollar spent on a federal mandate is one dollar less in local budgets to fight crime, improve education, provide public health services, and enhance transportation services.

Consider Merced County, California, located in my district. The county, in order to compensate for money spent on unfunded federal mandates, has taken the unprecedented step of closing its libraries and neglecting the upkeep of its parks. The County Board of Supervisors has told the community that a one-half cent increase in the local sales tax will be necessary to restore the libraries and the parks. Since the sales tax increase must be approved by a ballot initiative, however, it is highly unlikely that the residents of Merced County will approve yet another local tax



increase.

Unfunded federal mandates are wrong because they are literally bankrupting state and local governments. The National Conference of State Legislatures estimates that the 101st Congress enacted 20 statutes that will result in \$15 billion in direct costs to state budgets over the next five years. The National Association of Counties, in a recent national survey of its members, found that counties will spend an estimated \$33.7 billion over the next five years on only 12 specific federal mandates. And, the American Legislative Exchange Council found that estimates of the annual costs of complying with unfunded federal mandates may be as high as several hundred billion dollars.

Without our partners at the state and local level, we cannot govern this nation. Unless we provide relief from these expensive mandates, I can guarantee you that we will find more and more cities and towns who are unable to meet the basic obligations of their residents.

I do not believe this is what our founding fathers had in mind when they wrote the Tenth Amendment to the Constitution. I certainly do not think they ever envisioned the Federal government using its authority to impose an increasing number of costly federal mandates on state and local governments. But that is exactly what we are facing.

Because of this reality, leaders at the state and local level have been sending Congress a simple message: Stop the practice of passing the bill and then passing the buck. They are holding out hope that this subcommittee, and this Congress, will understand their plight and the financial burden they face because of unfunded federal mandates.

Current law on unfunded federal mandates is woefully inadequate and ineffective. The State and Local Government Cost Estimate Act of 1981 is the only law that I am aware of that presently seeks to constrain Congress' ability to pass unfunded mandates. This law requires the Congressional Budget Office to prepare an estimate of the costs that will be incurred by state and local governments in carrying out or complying with any significant bill or resolution reported out of a Congressional committee. The CBO state and local government cost estimates, however, are only performed for legislation that will result in an annual cost of \$200 million or more, or is likely to have exceptional fiscal consequence for a particular geographic region or level of government. Under this law and all other measures that attempt to address this problem by use of a fiscal note, it is argued that members of Congress will be reluctant to enact new unfunded mandates once they are made aware

of the cost to State and local governments. However, the present CBO Director has acknowledged that the current federal fiscal note requirement is ineffective at preventing new unfunded mandates. CBO Director Robert Reischauer has said that CBO's "estimates of state and local costs have little or no impact on legislative outcomes. With few exceptions, Congressional debates on proposed legislation have not focused on CBO's state and local cost estimates." Given these remarks and the current situation that we find ourselves in today, I believe that we can conclude that current law on this issue is not working and needs to be improved.

The National Performance Review, which was released with much fanfare and praise this past fall, specifically calls for Congress to refrain from the practice of enacting unfunded federal mandates. There are only two ways to put an end to unfunded federal mandates. One is to not enact unfunded federal mandates; the other is to fund the mandates that are enacted. This is not the time nor the place to discuss the merit of the Clean Water Act, the Clean Air Act, or any other worthy piece of legislation. Those discussions should be taken up in a different arena. But Mr. Chairman, we need to find a way to ensure that we fund all future mandates that we are going to place on state and local governments.

Since there are really no constraints on the ability of Congress to shift the costs of policy decisions to state and local governments, we can take an issue, debate it forcefully and passionately, and then resolve to do something about it - but not be responsible for the price tag.

In other words, Congress gets to feel good about taking some action, and local officials get to pick up the tab.

Instead, I believe the Congress should set the policy, but the Congress should also pay for the policy that it sets.

To that end, I have introduced H.R. 140, the Federal Mandate Relief Act. For those of you unfamiliar with my bill, it very simply states that compliance with unfunded mandates by state and local governments will be voluntary, unless the Federal government reimburses state and local governments for the costs associated with carrying out the mandated requirements. The bill embodies the philosophy of NO MONEY, NO MANDATE.

Currently, H.R. 140 has been cosponsored by 220 members of the House. The Senate version to my bill, introduced by Senator Dirk Kempthorne, has 54 cosponsors.

My bill is unanimously supported by the 6 national associations representing state and local governments. These groups are: the National Governors' Association, the National Conference of State Legislators, the Council of State Governments, the U.S. Conference of Mayors, the National Association of Counties, and the National League of Cities.

In fact, H.R. 140 is the leading bill in the House that promises to end future unfunded federal mandates. The bill is not retroactive.

Why do I believe that H.R. 140 is the ideal solution to the problem of unfunded federal mandates?

First, by requiring the federal government to fund its mandates, H.R. 140 will compel us to prioritize regulatory requirements to match available federal resources.

Second, it will also encourage more efficient and flexible regulations. If the Federal government is required to fund its mandates, you will see an end to broadly-imposed, one-size-fits all regulations that require municipalities in various parts of the country to meet the same federal standards, even though the local conditions in these municipalities are vastly different. The current standards setting process of the Safe Drinking Water Act is a perfect example of an unwieldy mandate that imposes requirements on localities, irrespective of local conditions and circumstances.

Finally, funding the edicts that we pass here in Washington is the right and fair thing to do. If laws are important enough to pass, they should be important enough to pay for. Congress needs to own up to its responsibilities, and H.R. 140 does just that.

In closing Mr. Chairman, let me reiterate my belief that this issue is not going to go away. In fact, with health care reform and welfare reform on Congress' agenda, the problem of unfunded federal mandates will probably get worse. Sooner or later we will have to deal with the issue. I thank you and the Subcommittee for recognizing the importance of the issue by holding this hearing. Before you are the sponsors of the leading bills designed to address this critical issue. I would encourage you to work with us so that we can move a bill to the House floor for consideration. I would be pleased to answer any questions that you may have.

Thank you.

